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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~845.~~ 520

THE STATE OF LOUISIANA, EX REL. JOHN ELLIOTT, NICHOLAS GWYNN, AND HENRY H. WALKER, PLAINTIFFS IN ERROR,

vs.

ALLEN JUMEL, AUDITOR OF THE STATE OF LOUISIANA, E. A. BURKE, TREASURER OF THE STATE OF LOUISIANA, AND THE BOARD OF LIQUIDATION OF THE STATE OF LOUISIANA.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

FILED MAY 20, 1881.

Other brief in connection with 2 + 3 orig

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a UNITED STATES OF AMERICA:

Circuit court of the United States in and for the fifth judicial circuit and eastern district of Louisiana.

STATE OF LOUISIANA EX REL. JNO. ELLIOTT et als, plaintiffs in error,
vs.
ALLEN JUMEL, AUDITOR, ET AL., DEFENDants in error. } No. 9052.

Messrs. Lacey & Butler for relators, plaintiffs in error; J. C. Egan, esq., att'y-gen'l of the State of La., for respondents, defendants in error.

Writ of error returnable to the Supreme Court of the United States on the second Monday of October, 1881.

1 UNITED STATES OF AMERICA:

Circuit court of the United States for the fifth judicial circuit and eastern district of Louisiana.

STATE OF LOUISIANA EX REL. JNO. ELLIOTT et als.,
vs.
ALLEN JUMEL, AUDITOR, ET AL. } No. 9052.

TRANSCRIPT.—FILED MARCH 29TH, 1880.

STATE OF LOUISIANA:

Third district court, parish of Orleans. Hon. F. A. Monroe, judge.

STATE OF LOUISIANA EX REL, JOHN ELLIOTT et als.
vs.
ALLEN JUMEL, AUDITOR, ET AL. } No. 26089.

Petition for mandamus.—Filed January 26th, 1880.

To the honorable F. A. Monroe, judge of the third district court, parish of Orleans, State of Louisiana:

2 The petition of the State of Louisiana, upon the relation of John Elliott, Nicholas Gwynn, and Henry S. Walker, who are citizens of the State of New York, residing in the city of New York, State aforesaid, hereby making themselves petitioners with the State of Louisiana aforesaid, against Allen Jumel, auditor of the State of Louisiana, Ed. A. Burke, treasurer thereof, and the Board of Liquidation created by act No. 3 of the sessions of the general assembly of said State for the year 1874, the said board now composed of Louis A. Wiltz, governor of the State of Louisiana; Sam. McEnery, lieutenant-governor of the State of Louisiana; Allen Jumel, auditor of the State of Louisiana; Ed. A. Burke, treasurer of the State of Louisiana; Will A. Strong, secretary of the State of Louisiana; Robert N. Ogden, speaker of the house of representatives of the State of Louisiana; and

the State National Bank of New Orleans, fiscal agent of the State of Louisiana; the several defendants and parties last aforesaid being citizens of the State of Louisiana, and residing or domiciled in the city of New Orleans, parish of Orleans, State of Louisiana aforesaid.

3 Your petitioners show that prior to the year 1874, the State of Louisiana had contracted an indebtedness to a very large amount, to wit, to the amount of eighteen millions of dollars, or thereabouts; that it was asserted by the said State, that a large part or portion of said indebtedness had been fraudulently contracted, and that the said State was not justly liable to pay the same; that, on the other hand, the persons holding and owning the said claims against the aforesaid State of Louisiana, contended that the same constituted a valid indebtedness, and that the said State was legally and equitably bound to pay the whole amount thereof; that, under such circumstances, and, with a view to determine the conflicting claims and pretentions aforesaid, and to liquidate and settle the indebtedness for which the said State of Louisiana was liable, and in order, furthermore, to make full account and satisfaction of her indebtedness, and fully to secure such amount as should be liquidated and agreed upon, the said State of Louisiana, by and through its legislature, duly convened and assembled within the said State during the year, 1874, did pass and enact the

4 aforesaid statute known and designated as act No. 3, of the sessions of 1874, entitled, "An act to provide for funding obligations of the State; for exchange of bonds; to provide for principal and interest of said bonds; to establish a board of liquidation; to authorize certain judicial proceedings against it; to define and punish violations of this act; to prohibit certain officers diverting funds except as provided by law, and to punish violation thereof; to levy a continuing tax, and provide a continuing appropiation of said bonds; to make a contract between the State and holders of said bonds; to prohibit injunction in certain cases; to limit the indebtedness of the State; to limit State taxes; to annul certain grants of State aid; to prohibit modification, novation, or extension of any contract heretofore made for State aid; to provide for the receipt of certain warrants for taxes, and to repeal all conflicting laws."

That by the first section of said act, it was provided, for the purpose of consolidating and reducing the floating and bonded debt of the State, that the governor, lieutenant-governor, auditor, treasurer,

5 secretary of state and speaker of the house of representatives, be, and the said officers in and by the said section were, authorized to have prepared and issued certain bonds, to be known as the consolidated bonds of the State of Louisiana, of the denomination of one hundred, five hundred, and one thousand dollars, all payable forty years from the first day of January, 1874, to bearer; to be numbered consecutively, and to bear interest at the rate of seven per cent. per annum, payable on the first day of January and July of each year, in the city of New York and the city of New Orleans, and with coupons of interest annexed thereto.

That by section second of said act, it was provided that the several officers designated in the first section thereof should constitute a board of liquidation, and a majority of said board should elect a fiscal agent for the State, who should become and be a member of the said board; and the several parties or officers having duly elected the State National Bank of New Orleans the fiscal agent of the State of Louisiana,

6 said bank is now a member of the aforesaid board of liquidation,

and in full discharge of the duties appertaining unto it as such fiscal agent and member of the board aforesaid.

That by section third of the aforesaid act No. 3, it was further provided that the bonds authorized by the first section thereof should be signed by the governor, auditor, and secretary of State; that the coupons annexed to such bonds should be signed by the auditor and treasurer, and that, when so prepared, said bonds should be exchanged for certain indebtedness of the State then existing, specified in said section, at the rate of sixty cents in consolidated bonds for one dollar of such existing indebtedness.

That in and by section five of the aforesaid act No. 3, it was provided that said consolidated bonds should be held and used by said board of liquidation, for the sole and exclusive purpose of exchange, in manner and form, and to the extent set forth in said act.

That by section seven of the aforesaid act No. 3, a tax of five and a half mills on the dollar of the assessed value of all real and per-
7 sonal property was therein and thereby annually levied; that in and by said act it was provided that the same should be collected for the purpose of paying the interest and principal of the aforesaid consolidated bonds; that the revenue derived from such tax in and by the said section, was set apart and appropriated for the payment of the aforesaid principal and interest, any other use or appropriation of the said tax and of the revenue realized therefrom was thereby prohibited; and it was therein and thereby made a felony for any officer of the State or any member of the board of liquidation to divert the said fund from the uses and purposes prescribed in the act and in the section of the act aforesaid.

It was further provided that if, during any year, there should be a surplus arising from said tax, after paying all interest falling due in that year, such surplus should be used for the purchase and retirement of the bonds authorized by and issued under said act, said purchase to be made by said board of liquidation, after due notice, and at the lowest offer.

8 It was further therein provided that the said interest tax shall be a continuing annual tax until the said consolidated bonds should be paid in full, principal and interest, or redeemed; that the said appropriation should be a continuing annual appropriation during the same period, and that the said levy and appropriation should authorize and make it the duty of the auditor and treasurer and the said board, respectively to collect said tax annually, to pay said interest, and to redeem the State bonds until the same should be fully discharged.

That by the eleventh section of said act No. 3, it was provided that each and every one of the several provisions of said act should be, and the same were thereby, made a contract between the State of Louisiana and each and every holder of the bonds issued under the act aforesaid; that by section ten it was enacted that any judge, tax collector, or officer of the State obstructing the execution of said act or any part or portion thereof, or failing to perform his official duties thereunder, should be deemed guilty of a misdemeanor, and punished accordingly.

9 That by section sixteen of said act it was provided that no court or judge thereof should have power to enjoin the payment of principal or interest of any bond issued under said act, or the collection of the tax therein provided for.

And your petitioners further show unto your honor, that at the same time and session at which the aforesaid act No. 3 was passed, the legis-

lature of the State of Louisiana, duly assembled as aforesaid, made and enacted another law, known as act No. 4, of the laws of the State of Louisiana for the year 1874, entitled an act proposing amendments to the constitution of Louisiana; that said act provided for the submission to the people of the said State, for their approval or disapproval, certain proposed amendments to the constitution of the State of Louisiana, then in force; that by one of said proposed amendments it was provided that the issue of the consolidated bonds, authorized by the act of the legislature of the State of Louisiana, hereinbefore particularly mentioned and referred to, should create, make, and constitute a valid and binding contract between the State of Louisiana and each and
10 every holder of said bonds, which the said State should, and could, by no means, and in no way or manner weaken or impair; that said bonds should be a valid and binding obligation of the said State in favor of any holder or holders thereof, that no court should enjoin the principal or interest of said bonds, or the levy and collection of the tax therefor, and to secure such levy, collection, and payment, the judicial power should be exercised when necessary. That the tax required for the payment of the principal and interest of the consolidated bonds aforesaid, should be collected each and every year until the said bonds should be fully paid, principal and interest; that the proceeds should be paid by the treasurer of the State to the holders of said bonds, as the principal and interest of the same should fall due, and that no further legislation or appropriation should be requisite for the assessment and collection of the tax aforesaid, and for the payment by the treasurer to the holders of the bonds and coupons aforesaid.

Further they show that the said amendment to the constitution of Louisiana, so proposed by the general assembly of said State,
11 by the people of the State of Louisiana, was in due form and course of law adopted, and that the said amendment became a part of the constitution of the State of Louisiana.

Your petitioners hereby respectfully refer to said act No. 3 of the session of 1874, to the act of the said year proposing amendments to the constitution of the State of Louisiana, to the constitutional amendments aforesaid, and to each and every part of the said act and constitutional amendment, your petitioners now and hereby making the same a part and portion of this their petition.

Your petitioners further show unto your honor that subsequent to the passage of the statutes aforesaid, and to the adoption of the constitutional amendment heron above referred to, a certain portion of the indebtedness of the State of Louisiana, of the nature and character specified in said act No. 3, was duly presented to the board of liquidation aforesaid, and pursuant to the terms of the said act the said board, and the members and officers thereof, in said act mentioned, exchanged for such indebtedness consolidated bonds of the State of Louisi-
12 ana, in strict conformity to the provisions and requirements of act No. 3 aforesaid, and duly and lawfully issued such consolidated bonds, sealed, signed, and executed, in all respects, as required by the provisions of the aforesaid law.

That the parties to whom the consolidated bonds were so issued duly surrendered to the aforesaid board of liquidation the evidence of indebtedness, as required by the act aforesaid, and received in lieu of such claims and indebtedness of the State consolidated bonds, relying upon the several provisions of the aforesaid funding act of the year 1874, and of the constitutional amendment of that year, and believing

that the same would be strictly and faithfully carried out and performed.

That in and by each of the said consolidated bonds, taken and exchanged as aforesaid, the State of Louisiana acknowledged her indebtedness to the bearer thereof in the sum specified in said bond, and promised and obligated herself to pay the said bond, and the amount thereof, in lawful money of the United States, at the office of the State treasurer, in the city of New Orleans, State of
13 Louisiana, on demand, after the first day of January, A. D. 1914, with interest at the rate of seven per cent. per annum, payable semi-annually, at the office of the state treasurer, in the city of New Orleans, State of Louisiana, or at the office of the fiscal agent of the State of Louisiana, in the city of New York, on the first day of July and January in each year, upon the surrender of interest-coupons attached to the said bonds, as the said coupons should severally become due. That in each of the said bonds it was further stated that the same was issued under the authority of, and in strict conformity to, an act of the general assembly of the State of Louisiana, approved January 24th, 1874, being act No. 3 of the same year. That each of the said bonds was duly sealed with the great seal of the State of Louisiana, and was signed by the governor, the auditor of accounts, and the secretary of state of the said State of Louisiana. That to each of the said bonds, coupons of semi-annual interest were attached; in and by each of which said coupons the State of Louisiana promised to pay the
14 bearer thereof, on the semi-annual interest day therein mentioned, in New Orleans or New York, at the option of the holder, the same being the six months' interest upon the aforesaid bonds. That each of said coupons was signed by the auditor and treasurer of the State Louisiana, and, in every respect, was executed and issued in strict conformity to the law authorizing the same. That on the outside of each of said bonds there was printed, or caused to printed, by the State of Louisiana, a statement that the said bond was issued under the authority of the act of the general assembly, approved January 24th, 1874, and that the payment of the principal and interest of said bond was provided for by the levy of an annual tax, fixed and guaranteed by the constitution of the State, and not repealable by legisiative enactment.

Your petitioners further show, that said consolidated bonds were duly executed and delivered by the State of Louisiana to the amount of twelve millions of dollars, more or less; but the precise sum your petitioners are unable to state.

Further they show, that as trustees for a large number of per-
15 sons, your petitioners are owners, holders, and bearers of a large number of the aforesaid bonds and coupons, issued pursuant to the funding act aforesaid and the constitutional amendment hereinabove referred to, and that the amount of the bonds so held and owned by your petitioners exceeds the sum of nine hundred thousand dollars. That the bonds owned and held by your petitioners are fully designated and identified by the numbers and amounts thereof, set forth in the exhibits hereunto annexed, marked A, B, C, D, E, F, G, H, and which your petitioners, for greater certainty, make a part of this their petition.

That your petitioner, Nicholas Gwynn, is the owner, holder, and bearer, in his own right, of bonds so executed and issued by the State of Louisiana, as aforesaid, under and pursuant to said act No. 3, and the constitutional amendment aforesaid, of the year 1874,

to the amount of four thousand and upwards, with coupons annexed; and that the numbers and amounts of the bonds so held and owned by your petitioner, Nicholas Gwynn, are identified and designated in the exhibit hereunto annexed marked "A." and
16 which your petitioners also make a part of this, their petition.

Further your petitioners show that, during and since the year 1874, there has been duly levied in the State of Louisiana, the tax provided for in the law and constitutional amendment aforesaid for the payment of interest upon the consolidated bonds hereinabove referred to; that a portion of the tax as levied has been collected in each year. A portion has been annually delinquent; and is in process of collection in each year, more or less of the interest on said bonds has been paid, a portion of the interest on said bonds remaining unpaid; and that in each and every year a large amount of cash, being the proceeds of the tax aforesaid, has remained to the credit of the interest fund for the payment of interest upon the bonds aforesaid.

That there is, and now remains in the hands of the defendant, Burke, treasurer of the State of Louisiana, and in the hands of his codefendants, officers, as hereinbefore specified, and members of the said board of liquidation, the sum of $235,103.08, as your petitioners have been informed and believe to be true.

17 That of said sum, $133,351.33 were collected and paid into the hands of said defendant Burke, treasurer, and his codefendants officially, and as members of the board aforesaid, in, and during the year 1879; and that the balance of the said amount, $235,103.08, was collected and paid in during previous years.

That the exhibit hereunto annexed marked I, shows the condition of the consolidated bonded debt of the State of Louisiana, arising under the funding act No. 3 aforesaid, upon the 10th day of August 1879; the taxes that have been assessed and collected and that are delinquent, and in process of collection, the amount paid on coupons, the amount of cash to the credit of interest fund, in the hands of the defendants; and finally, the amount of interest upon said bonds due and unpaid.

That in the first column of said exhibit is shown the amount, for each year, of the five and one-half mills tax levied upon the assessed value of property for the year; in the second column of said exhibit is shown the amount of tax annually collected, down to the 10th day of
18 August, 1879; in the third column the amount of tax delinquent and in process of collection on the date aforesaid; in the fourth column the amount of interest annually paid upon the bonds aforesaid; in the fifth the amount of tax collected each year for the account of the interest fund aforesaid not paid out; and in the last column of the aforesaid Exhibit G, is shown the amount of interest due and unpaid each and every year.

Your petitioners further show that since the 10th day of August, 1874, collections of tax, levied and appropriated under act No. 3, and constitutional amendment of 1874, have been made by the said defendants, and are now held by them to a large amount; that collections of the said tax are daily in process of being made, and that the said defendants are daily in receipt of the monies or proceeds of such tax; but the amount of the collections and receipts aforesaid is unknown to your petitioners, and cannot therefore be stated by them.

And your petitioners further show unto your honor, that in the year 1879, the people of the State of Louisiana held a convention for the
19 purpose of adopting a new constitution for that State; that a constitution having been adopted the same was duly submitted

to the people of said State for their approval; that on the 22d day of December, 1879, an election was duly held in the State of Louisiana for the purpose of taking the sense of the people aforesaid in reference to the approval or rejection of the said constitution, and that a majority of the votes cast at the said election having been given in favor of the constitution aforesaid, and the proclamation of the governor having been duly given, the constitution aforesaid is now the constitution of the State of Louisiana, and the organic law of that State. That by the 208th article of said constitution of 1879, it is provided the State tax on property for all purposes whatever, including expenses of government, schools, levees, and interest shall not exceed, in any one year, six mills on the dollar of its assessed valuation; the tax thus allowed being far less in amount than the sum authorized and prescribed by the aforesaid funding act No. 3, and the constitutional amendment of 1874.

20 That a part of the aforesaid constitution of 1879, known as the ordinance relative to the State debt, reads as follows:

"STATE DEBT.

"ART. 1. Be it ordained that the interest to be paid on the consolidated bonds of the State of Louisiana be, and is hereby, fixed at two per cent. per annum for five years from the first of January, 1880, three per cent. per annum for fifteen years, and four per cent. per annum thereafter; and there shall be levied an annual tax sufficient for the full payment of said interest not exceeding three mills, the limit of all State tax being hereby fixed at six mills, provided the holders of consolidated bonds may, at their option, demand in exchange for the bonds held by them, bonds of the denomination of five dollars, one hundred dollars, five hundred dollars, one thousand dollars, to be issued at the rate of seventy-five cents on the dollar, and to be surrendered by such bondholders; the said new issue to bear interest at four per cent. per annum, payable semi-annually.

"ART. 2. The holders of the consolidated bonds may, at any time,
21 present their bonds to the treasurer of the State, or to an agent to be appointed by the governor, one in the city of New York, and the other in the city of London, and the said treasurer or agent, as the case may be, shall endorse or stamp thereon the words, 'Interest reduced to two per cent. per annum for five years from January 1st, 1880; three per cent. per annum for fifteen years, and four per cent. per annum thereafter'; provided the holder or holders of said bonds may apply to the treasurer for an exchange of bonds as provided in the preceding article.

"ART. 3. Be it further ordained that the coupons of said consolidated bonds falling due on the first of January, 1880, be, and the same is hereby, remitted, and any interest tax collected to meet said coupons is hereby transferred to defray the expenses of the State government."

And your petitioners further show unto your honor, that a large portion of the money *was* in the hands of the said defendant Burke, treasurer, as aforesaid, consists of interest taxes, collected to meet the coupons of said bonds falling due the first day of January, 1880, and
22 that a large portion of the tax of five and one-half mills levied for the year 1879, which is delinquent and in process of collection, is, and will be, for the purpose of meeting the coupons of said bonds falling due on the 1st day of January, 1880, and that said tax is now in process of collection by the said defendants, and is daily

being collected and received by them, to a large amount, but to what extent your petitioners, being ignorant in the premises, are unable to state.

That most of the coupons due on the 1st day of July, have been paid by the tax for 1879, already collected, and that all the money proceeds of the tax of 1879, in the hands of the defendants, or any of them, is required for the payment for the coupons upon the consolidated bonds aforesaid, falling due the first day of January, 1880; that the sum so collected and in the hands of the said defendant Burke, treasurer, as aforesaid, and the other defendants, members of the board of liquidation aforesaid, for the purpose of meeting the January coupons of 1880, amounts to a large sum, as your petitioners are informed
23 and believe, to wit, to the sum of $50,000.00.

That the sum in process of collection, and received by said defendants, is still larger, to wit, the sum of $300,000.00, to the best of your petitioners' knowledge, information, and belief.

Your petitioners further show unto your honor, that the said defendant Louis A. Wiltz, now governor of the State of Louisiana, was president of the convention that adopted the constitution of 1879; that he greatly promoted that adoption, and that he intends to carry out the provisions thereof.

That defendant Burke, was treasurer of the State of Louisiana at the time of the adoption of the aforesaid constitution, and holds over, or continues in office under a provision of the organic law aforesaid, and that he has expressed or shown an intention to support the said constitution, and to use the funds collected as proceeds of the tax levied and appropriated by the act No. 3, and the constitutional amendment of 1874, for purposes other than those expressed in said act, to wit, for the purpose stated in the constitution of 1879, and in that part
24 thereof relative to State debt, to defray the expenses of State government.

That all and singular the other defendants are State officers, elected under and pursuant to the State constitution of 1879, except perhaps, the fiscal agent aforesaid; and that the said defendants last referred to have also expressed an intention to abide by and to carry out all the provisions of the fundamental law of Louisiana, to the best of your petitioners' knowledge, information, and belief.

That all of the said defendants, as far as your petitioners are informed and believe to be true, intend to use the funds now in their hands, bring the proceeds of the levy, appropriation, and collection of the five and one-half mills tax for the year 1879, in said act and constitutional amendment of 1874 specified, for other purposes than the payment of interest on said bonds, and intend to divert the funds so collected, and in process of collection, from the payment of the interest on said bonds, as provided in the aforesaid funding act, and constitutional amendment passed and adopted in the year of our Lord 1874, and to apply
25 the same to the general uses and purposes of the State of Louisiana.

And your petitioners further show unto your honor, according to the best of their knowledge, information, and belief, the several defendants herein, and each and every one of them, unless prevented by this court from so doing, will entirely ignore the aforesaid act No. 3, and the constitutional amendment of the year 1874, and disregard the right and privileges acquired by your petitioners, and the holders of consolidated bonds, under such act and constitutional amendment—they, the said defendants, pretending and giving out that the same have

been abrogated and destroyed by the present constitution of the State of Louisiana; that they will endeavor to put into full force and immediate execution each and every provision and requirement of the fundamental law aforesaid—including article 208 of the present constitution of the State of Louisiana, and that portion thereof relating to the State debt, hereinabove particularly referred to; and that such acts and conduct will greatly impair the obligation of the con-
26 tract hereinabove disclosed, and subject your petitioners to a loss and injury far exceeding a half million of dollars.

Your petitioners further show, that the State of Louisiana has not paid and declines and refuses to pay the coupons on said bonds, which fell due on the 1st day of January, 1880, although the same were duly presented for payment; that your petitioners have no means to compel the payment of said coupons by the ordinary process of law, and except through the writ hereinafter prayed for; and that unless your petitioners can obtain the relief hereinafter demanded, they are powerless to secure an enforcement of their right in the premises.

Your petitioners further show, that the said defendants threaten, intend, and are about to divert all and singular the amounts collected in the several years from 1874 to 1879, inclusive, and also the several amounts in process of collection, not already paid out for interest, from the payment of any further interest on coupons due in said years, respectively, and from the purchase of any of said consolidated bonds, as required by said act No. 3 of the year 1874; and that such diver-
27 sion will injuriously affect the value of the bonds owned and held by petitioners, and the value of all said consolidated bonds, and will make said bonds of less value by fifty per cent. thereon if no such diversion were made.

Further they show, that all of the provisions of the constitution adopted by the State of Louisiana in 1879, with respect to said consolidated bonds and the coupons thereunto attached, are in conflict with article first, section 10, of the Constitution of the United States, which declares that no State shall pass any law impairing the obligation of contracts, and therefore are invalid and void; and that the provision of the said constitution of 1879, limiting the tax to be imposed under that law, below the amount of tax fixed and levied by the aforesaid act No. 3, and which in any way affects or changes the levy of tax made by the aforesaid act of 1874, are also violative of the aforesaid provision of the Constitution of the United States, and are absolutely null and void.

Further they show, that they now distinctly aver and charge,
28 as is hereinabove intimated and alleged, that the said defendants claim and insist, that the aforesaid constitution of 1879, of the State of Louisiana, in all of its parts and provisions, is valid, operative, binding, and controlling; that the aforesaid funding act No. 3, of the year 1874, and the constitutional amendment of that year, are subordinated to, and abrogated by, the aforesaid constitution of 1879; and that said constitution is a sufficient warrant to them, the said defendants, to divert the monies and funds collected, and to be collected, from the taxes levied by, and under, the aforesaid act of 1874, from the uses, purposes, and objects, provided by said act No. 3, and to apply the same to such objects as may be prescribed by the organic law of Louisiana, above referred to. All which claims and pretences, on the part of the several defendants aforesaid, and each and every act and thing, herein charged against the said defendants, in connection with the aforesaid funding act, and especially in relation to the unlawful

charge of deterioration or diversion of the tax and the proceeds
29 of the tax prescribed in and provided for by the aforesaid statute No. 3, greatly impair the obligation of the contract between petitioners and the State of Louisiana, and are violative of article 1, sec. 10, of the Constitution of the United States.

Further, they show, that the said defendants, or the most of them, have been asked to comply with your petitioners' most reasonable demand to recognize act No. 3 of the session of the general assembly of the State of Louisiana as a valid and subsisting law, and to collect and pay the taxes levied and imposed by said act No. 3, in accordance with the clear and explicit provisions thereof; but, notwithstanding the several matters and things hereafter are lawful and right, and appertain and are essential to the discharge of the duties attached to the office of the said defendants, and which may lawfully be required of them, they, the said defendants, absolutely refuse to comply with petitioners' demand in the premises.

Finally your petitioners show unto your honor that the present controversy or suit is of a civil nature at law, arising under the Constitution of the United States, wherein the matter in dispute is
30 between citizens of different States, and exceeds, exclusive of costs, the sum or value of five hundred dollars.

The premises considered, your petitioners pray that an alternative writ of mandamus may be directed to issue, and that therein and thereby Allen Jumel, auditor of the State of Louisiana; Ed. A. Burke, treasurer of the said State, and the board of liquidation, made and constituted by the aforesaid act No. 3 of the year1874, and composed of Louis A. Wiltz, governor of the State of Louisiana; Sam. McEnery, lieutenant-governor of the State of Louisiana; Allen Jumel, auditor of the State of Louisiana; Ed. A. Burke, treasurer of the State of Louisiana; Will. A. Strong, secretary of state of the State of Louisiana, and Robert H. Ogden, speaker of the house of representatives of the State of Louisiana, and the State National Bank of New Orleans, fiscal agent of the State of Louisiana, may be respectively commanded and required, without delay, to apply and pay to the extinguishment of the interest now due and payable upon the consolidated bonds of the State of Louisiana [held and owned by your petitioners
31 as aforesaid, and which may hereafter be acquired or held and owned by them], or becoming due and payable upon said bonds, and to the redemption and retirement of such consolidated bonds as are provided for and required by the aforesaid act No. 3 of the year 1874, any and all monies and proceeds of the tax levied or fixed by said act now in the hands or subject to the control of the said defendants or either one of them, or which have been in the hands or subject to the control of the said defendants or either one of them, or which have been in the hands or subject to the control of the said defendants, or which may come into their hands or become subject to the control of either of them not already applied to the payment of interest upon the aforesaid bonds, or to the redemption and retirement of the bonds themselves, as provided for and required in and by said act No. 3; that in and by the alternative writ of mandamus aforesaid, the said auditor, treasurer, and board of liquidation, respectively, and also the several parties or officers forming and constituting said board, as hereinabove set forth and disclosed,
32 may furthermore be commanded and required to proceed, without delay, to collect the tax fixed or levied in and by the aforesaid act of No. 3 the year 1874, in the manner and to the

Stricken out as per order on amend'd petition transcribed at page 72 of this transcript.

extent contemplated by that statute, and to apply and pay all monies realized from such tax to the discharge of the interest and the redemption of the bonds issued under and by virtue of the aforesaid funding act No. 3 of the sessions of the Louisiana legislature for the year 1874, until the principal and interest of such bonds be fully extinguished and discharged; and, finally, that the said defendants may severally be commanded and required to enforce the act, hereinabove last referred to, and particularly to carry out, perform, and discharge each and every one and all the ministerial acts, things, and duties respectively required of them by the aforesaid act No. 3, according to the full and true intent and purport of that act, which for greater certainty, is hereunto annexed and made part of this petition,
or show cause to the contrary before this honorable court,
33 upon a day and hour to be fixed by your honor.

And in due time that the alternative writ aforesaid may be made absolute, and a peremptory writ be ordered to issue, unconditionally directing, requiring, and commanding the said auditor, treasurer, and board of liquidation, and the several members of said board, and each and every one of the said defendants, to do and perform, without unreasonable detention and delay, all and singular the matters and things directed and required of them in the alternative writ. And that your petitioner and relator may have such other & further order and decree as is suited to law and the nature of this case, together with their costs and expenses in this behalf expended.

(Signed) LACEY & BUTLER,
Attorneys.

Affidavit of Frank N. Butler for mandamus, annexed to and made part of the foregoing petition.—Filed January 26th, 1880.

STATE OF LOUISIANA,
City of New Orleans:

34 Frank N. Butler, one of theattorneys for the petitioners and relators in the foregoing petition named, being duly sworn, doth depose and say, that the facts, alegations, and averments set forth and contained in said petition are true; and, that this affidavit is made by deponent and not by petitioners, because they are all absent from the State of Louisiana, and are now in the city and State of New York.

All of which is true to the best of deponent's knowledge, information, and belief.

(Signed) FRANK N. BUTLER.

Sworn to and subscribed before me this 26th day of January, A. D. 1880.

(Signed) BEN. ARMBRUSTER, *Clerk.*

Order for writ of mandamus.

Let an alternative writ of mandamus issue as prayed for, returnable in open court on Monday the 9th day of February, A. D. 1880, at 11 o'clock a. m.

Dated New Orleans, January 26th, 1880.

(Signed) F. A. MONROE, *Judge.*

35 *Exhibit marked A, annexed to and made part of petition.—Filed 26th January*, 1880.

EXHIBIT.

Consol bonds of the State of Louisiana, dated January 1st, 1874, due on demand after January 1st, 1914, interest payable semi-annually (January 1st and July 1st). Coupons payable January 1st, 1880, and thereafter attached. Coupons thereof not fully paid and belonging with the bonds; those payable January 1st, 1879, on which 35 % of the amount due thereon remains unpaid; those payable July 1st, 1879, on which 25 % of the amount due thereon remains unpaid.

The numbers of such bonds, which are of the denomination of $1,000.00 each, being as follows, namely: 4381, 4382, 4383, 4384, 4385, 4386, 4387, 4388, 5771, 5765, 5766, 7952, 7953, 4843, 266, 286, 581, 582, 583, 584, 590, inclusive; 1003, 1004, 1005, 1006, 1399, 1487, 1551, 1846, 1887, 2085, 2466, 3254, 3538, 4432, 4574, 4831, 5151, 5442, 6187, 6279, 6336,
36 6473, 6474, 6513, 6598, 6795, 7046, 7199, 7316, 7367, 7377, 7824, 8108, 8123, 8333, 8392, 8426, 8444, 8455, 8457, 8458, 8617, 9195, 9846, 2927, 2094, 2400, 1037, 3689, 2661, 8125, 2095, 2610, 1072, 623, 2102, 2911, 3395, 8140, 5807, 3826, 3828, 3829, 3830, 3831, 2651, 2652, 2653, 2654, 2655, 2656, 164, 308, 467, 468, 484, 554, 1030, 1821, 1945, 1997, 2069, 3265, 3412, 3447, 3876, 3891, 3905, 4092, 4288, 4430, 4828, 5592, 5677, 6060, 6098, 6983, 1066, 6984, 6988, 6989, 256, 2732, 2640, 8391, 8103, 7985, 6941, 6324, 6516, 6086, 6128, 4543, 4418, 3704, 2912, 2735, 683, 4103, 4081, 4067, 3976, 1758, 11, 2434, 2594, 1146, 2106, 4394, 1662, 1663, 1664, 1665, 1666, 9616, 9617, 9615, 1648, 1844, 1875, 1925, 2224, 2940, 2947, 2981, 3175, 3184, 3296, 3313, 3401, 3479, 3618, 5688, 5701, 6106, 7239, 7459, 969, 5253, 5254, 5255, 7252, 9570, 3999, 1057, 1969, 165, 7163, 7291, 7438, 7454, 7456, 3246, 3858, 2336, 8110, 8795, 3827, 5804, 5805, 5806, 5808, 5809, 4726, 4727, 4728, 4729, 4730, 4731, 4732, 4733, 4734, 4723, 4724, 4725, 700, 666, 1090, 1091, 1094, 1214, 2960, 2890, 5249, 8405, 7976, 4720, 4721, 2722, 9549, 9550, 9551, 4228, 8772, 9994, 9456,
37 5820, 5821, 5822, 5823, 5824, 5825, 1191, 1344, 1368, 1397, 2111, 195, 1013, 1025, 1057, 1061, 1079, 1088, 1446, 1787, 2943, 2944, 3m, 3226, 3227, 3228, 3484, 3799, 3809, 3934, 4170, 4437, 4438, 4439, 4440, 4441, 4442, 4443, 4444, 4445, 4830, 5494, 6303, 6304, 6305, 6306, 6307, 6308, 6309, 8143, 9630, 9631, 9632, 9633, 9634, 9635, 6618, 6619, 6620, 5197, 7599, 8117, 9180, 9181, 2145, 7250, 7791, 7947, 8080, 54, 98, 2144, 9552, 9553, 1082, 2386, 3925, 3926, 5228, 5726, 6703, 7897, 8151, 239, 594, 1055, 1899, 7942, 7799, 7939, 7839, 5770, 238, 94, 942, 2052, 2623, 2624, 7881, 9636, 9637, 9638, 9645, 9646, 9647, 9640, 9639, 9641, 9642, 9643, 9644, 8483, 8484, 8485, 8486, 8487, 8488, 8489, 8490, 3993, 4607, 283, 437, 539, 1032, 1284, 1731, 1740, 2487, 2657, 2658, 2659, 2870, 2784, 3347, 3400, 3414, 3864, 3869, 4426, 5115, 5116, 5346, 5762, 7617, 8354, 8725, 9182, 5581, 4339, 4340, 3603, 3604, 3605, 3606, 3607, 3608, 3609, 3, 415, 1518, 3246, 3465, 987, 2232, 2233, 2234, 2235, 2236, 2551, 2252, 2253, 2254, 7527, 7528, 7529, 7530, 7531, 4537, 5312, 366,
38 5315, 5198, 55, 154, 235, 458, 472, 496, 506, 517, 1029, 1328, 1430, 1431, 1433, 1434, 1437, 1449, 1465, 1526, 1694, 1983, 2117, 2604, 2797, 3324, 3366, 3378, 4045, 4396, 4712, 5180, 5561, 5562, 5563, 5604, 6089, 6869, 7314, 7584, 7940, 8077, 4863, 4864, 4865, 4866, 4675, 4676, 4677, 4678, 4679, 4680, 7286, 5952, 1036, 608, 1607, 8362, 7215, 7216, 7217, 7218, 7219, 7220, 7221, 7222, 7223, 7224, 489, 1508, 1878, 954, 6093, 5601, 4702, 4296, 2557, 254, 1927, 1926, 6094, 5918, 5889,

4077, 3874, 1889, 1890, 7373, 7192, 6836, 7812, 7339, 7750, 7813, 3696, 7171, 7340, 8403, 7259, 95968, 7642, 9567, 4372, 4639, 4758, 4364, 4366, 4367, 9569, 6819, 8453, 5840, 5841, 5839, 5842, 5764, 5838, 338, 3245, 7277, 4835, 4824, 2957, 8205, 7646, 7690, 5196, 6110, 6837, 5884, 5813, 3913, 3911, 2456, 251, 1849, 1850, 1170, 1027, 2555, 2963, 3186, 3320, 5465, 5639, 9151, 9196, 9827, 5774, 5775, 5776, 8297, 3955, 4344, 6698, 4343, 3886, 6747, 6748, 5527, 3656, 2558, 3654, 3655, 1585, 3216, 7011, 658, 6543, 200, 441, 493, 2858, 1914, 671, 79, 80, 81, 82, 101, 427, 664, 677, 686, 953, 955, 983, 1177, 1187, 1188, 1189, 1190, 1195, 1196, 1197, 1198, 1199, 1207, 1208, 1209, 1210, 1211, 1217,

39 2244, 2345, 2374, 2375, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2718, 2720, 626, 628, 629, 1521, 1522, 1523, 1524, 1525, 1683, 4264, 5262, 5263, 5264, 5265, 5266, 5267, 5268, 6605, 3894, 4037, 4248, 5271, 5742, 5768, 522, 1504, 2549, 4809, 9822, 4376, 8397, 8396, 6317, 7819, 676, 69, 1498, 1705, 2465, 2582, 7385, 8183, 8206, 8436, 7760, 8178, 4526, 5566, 5658, 4484, 4497, 5225, 5682, 5795, 6691, 6692, 6693, 6077, 5723, 4557, 4556, 6170, 5722, 3658, 6628, 1120, 5616, 5866, 1709, 4515, 4521, 4486, 4661. 721 bonds, $1,000.00 each, $721,000.

The number of such bonds which are of the denomination of $500.00 each, being as follows, namely: 81, 82, 366, 55, 782, 962, 943, 1413, 1484, 1667, 1788, 847, 946, 936, 2585, 2586, 2587, 2588, 2589, 2590, 842, 302, 905, 602, 935, 1429, 1430, 1431, 272, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 1795, 1796, 1797, 1798, 1799, 1800, 1801, 1802, 1803,

40 194, 220, 118, 16, 71, 184, 584, 1323, 1324, 1325, 1326, 1327, 1328, 1329, 1330, 1331, 1332, 1333, 492, 1839, 369, 370, 375, 1335, 1336, 1337, 1338, 1339, 1340, 96, 97, 495, 540, 731, 836, 843, 489, 832, 839. 99 bonds of $500.00, $49,500.

The number of such bonds as are of the denomination of $100.00 each, being as follows, namely: 1051, 1052, 1053, 1054, 3367, 2131, 2132, 1405, 1406, 1407, 4286, 4287, 4288, 606, 3403, 608, 607, 3417, 3418, 657, 3692, 3768, 3769, 3770, 3719, 177, 178, 176, 3376, 3377, 3378, 175, 2204, 3715, 3716, 3717, 3718, 2390, 1773, 1774, 3940, 3941, 3942, 472, 1073, 1074, 1075, 1076, 1077, 1078, 1079, 1080, 1081, 2110, 3423, 4200, 4201, 4202, 4203, 4305, 4306, 673, 2049, 2053, 3590, 3424, 4105, 4106, 4107, 4108, 4190, 4191, 4192, 2578, 4151, 4152, 4153, 4154, 3880, 372, 1038, 1839, 1040, 1041, 589, 1412, 1413, 1414, 1415, 1416, 1417, 1418, 1419, 1420, 1421, 3541, 2973, 3926, 3390, 3391, 3755, 3756, 3757. 103 bonds of $100.00 each, $10,300.

41 F. G. & Co.: 2817, 2816, 2393, 2353, 1132, 1383, 2864, 3634, 1152, 2956, 469, 468, 467, 466, 336, 281, 279, 499, 278, 277, 3636, 3638, 3639, 3640, 3657. 25 bonds, each of $100.00, $2,500.

2450, 2499, 2460, each of $500.00, $1,500.

That is to say:

721 bonds of	$1,000.00	each	.....	$721,000 00
99 " "	500.00	"	.....	49,500 00
103 " "	100.00	"	.....	10,300 00
F. G. & Co.,	2,500		.....	4,000 00
	1,500			
				$784,800 00

Bonds and coupons held and owned by Nicholas Gwynn: 1817, 2816, 2393, 2353, 1132, 1383, 2864, 3634, 1152, 2936, 469, 468, 467, 466, 335, 281, 279, 499, 278, 277, 3636, 3637, 3638, 3639, 3640, each of the denomination of $100.00; 2450, 2499, 2460, each of the denomination of $500.00; and bond numbered 1709, of the denomination of $1,000.

Exhibit marked B, annexed to and made part of petition.—Filed January 26, 1880.

EXHIBIT.

42	Nos. 1099, 1393, 6058, 6147, 2385, 6341, 6544, 2895, 3571, 7844, 1144, 1145, 2444, 2469, 3491, 3602, 4107, 2933, 6439, 1784, 2719, 3562, 3585, 6735, 6729, 1788, 4082, 5602, 1417, 1453, 4249, 1515, 247, 1010, 1946, 1955, 2945, 3422, 3560, 3968, 3969, 646, 2874, 2634, 6555, 7410, 7683, 7167, 3566, 3256, 3349, 3348, 4252, 4253, 4254, 4255, 4256, 4257, 6221, 6528, 6705, 6711, 7382—63 bonds, @ $1,000	$63,000
	434, 344, 911, 343, 66, 897, 367, 1, 1728, 2487, 2578, 2498, 2526, 2497, 2518, 2464, 2462, 2459, 382, 723, 251, 253, 129—23 bonds, @ $500	$11,500
	92, 106, 520, 521, 522, 1017, 568, 588, 594, 1000, 1001, 1018, 1002, 1737, 1738, 1739, 1740, 1019, 1741, 1742, 999, 566, 1734, 1735, 1736, 4240, 4242, 1016—28 bonds, @ $100.00	$2,800
	Total	$77,300

Exhibit marked C, annexed to and made part of petition.—Filed 26th January, 1880.

EXHIBIT.

	Nos. 3743, 3744, 3742, 3745, 6675, 6676, 2747, 9624—8 bonds, @ $1,000 each		$8,000
43	147, 148, 151, 149, 418, 867, @ $500		3,000
	539, 540, 622, 623, 1428, 619, 618, 620, 621, 1441, 624, 625, 626, 627, 1448, 631, 632, 628, 629, 181, 1660, 179, 180, 187, 2381, 213, 2382, 2383, 2384—29 bonds, @ $1,000		2,900
			$13,900
	Bonds of $1,000 each	$784,000	
	" " 500 "	62,500	
	" " 100 "	15,600	
			862,100
	Total		$876,000

Exhibit marked D, annexed to and made part of petition.—Filed January 26, 1880.

EXHIBIT.

	Nos. 1681, 5686, 21, 7595, 5438, 6732, 2250, 4772, 7660, 7240, 4334, 6064, 4715, 3736, 6947, 2774, 2249, 4392, 7656, 2240, 6834, 173, 2530, 4161, 1335, 2251, 3526, 2159, 4115, 8121—30 bonds, @ $1,000	$30,000
	Nos. 1775, 1776, 2448, 2474, 2447, 2479, 2494, 2486—8 bonds, @ $500	4,000
	Nos. 4147, 4148, @ $100	200
	Amount carried forward	$34,200
44	Amount brought forward	34,200
		876,000
	Total	910,200

Exhibit marked E, annexed to and made part of petition.—Filed January 26, 1880.

EXHIBIT.

Nos. 8789, 8788, 8787, 3192, 1979, 7354, 6944, 3962, 2460, 9976, 4836—11 bonds, @ $1,000 each	11,000
738, 598, 1479, 308, 315, 1480, 1448, 1449, 1722, 1723, 1724—11 bonds, @ $500 each	5,500
4090—1 bond, @ $100	100
	$16,600
	910,200
Total	$926,800

Exhibit marked F, annexed to and made part of petition.—Filed 26th January, 1880.

EXHIBIT.

Nos. 6012 and 6013, @ $1,000 each		$2,000
Previously stated		926,800
Total		$928,800
No. 150	$500	
" 630	100	
		600
Total		$929,400

45 *Exhibit G, annexed to and made part of petition.—Filed January 26th, 1880.*

EXHIBIT.

Nos. 1613, 124, 4681, 4682, 4683, 4684, 4685, 4686, 8626, 8627, 8628—11 bonds, @ $1,000	$11,000
No. 1390 " 100	100
	$11,100
	929,400
Total	$940,500

Exhibit marked H, annexed to and made part of petition.—Filed 26th January, 1880.

EXHIBIT.

Nos. 5793 and 7927—2 bonds, @ $1,000 each	$2,000
186, 2372, 1669, 226, 1668, 727, 730, 731, 732, 2234, 2235, 49, 2330, 726, 729, 3399, 2069, 1975, 3256, 3166, 3141, 3139, 2270, 725, 2215, 1911, 1121, 851, 849, 789, 763, 761, 762, 2512, 2318, 3241, 2269, 924, 105, 2245—40 bonds, @ $100 each	4,000
	$6,000
	940,500
Total	$946,500

46 *Exhibit I, annnexed to and made part of petition.—Filed January 26th, 1880.*

LOUISIANA STATE CONSULS.

NEW ORLEANS STOCK EXCHANGE,
August 30th, 1878.

The bond committee respectfully present to the exchange the accompanying tableau, showing the 5½ mills' assessments, collections, and disbursements of the interest tax fund for State consols, issued under funding act of 1874; and also amount of delinquent taxes due interest tax fund in process of collection.

Your committee is indebted to the politeness of the State treasurer, State auditor, and their employees in furnishing the information required from their respective offices.

E. C. FEINOUR,
Chairman.
W. E. HUGER.
HERM. ROEHL.
A. BRITTIN.

Consolidated bonded debt of the State of Louisiana August 10th, 1879:

Funded to date	$11,777,100 00
Outstanding, $423,500 convertible into bonds at 60 cents	254,100 00
	$12,031,200 00

47

Year.	Five and one-half mill tax assessed to pay interest.	Amount collected to August 10th, 1879.	Delinquent am't in process of collection.	Amount of coupons paid by treasurer.	Cash to credit of interest fund.	Interest due & unpaid, excluding coupons due Jan'y 1st, 1880, remitted by constitution of 1879.
1874	1,925,752 27	873,862 16	351,890 11	735,400 00	34,601 80	88,997 00
1875	1,114,320 12	774,429 72	339,890 40	734,884 50	3,637 89	89,512 50
1876	1,075,239 38	688,098 34	387,141 04	660,187 50	34 95	164,209 50
1877	960,308 38	738,414 43	221,893 95	719,421 50	26 85	104,975 50
1878	974,928 53	702,536 81	272,371 72	626,519 38	63,720 26	197,887 62
1879	973,500 00	300,107 39	673,392 61	161,700 00	133,351 33	250,498 50
Total	$6,324,048 68	$4,077,468 85	$2,246,569 83	$3,638,112 88	$235,103 08	$896,070 62

48

Delinquent taxes due interest fund.		2,246,569 83
Past due interest outstanding	$896,070 62	
Deduct cash in treasury to credit of interest fund	235,103 08	
Leaves interest outstanding		660,957 54
Excess of delinquent tax due interest fund		$1,585,602 29

Writ of mandamus to Allen Jumel, auditor of the State of Louisiana, E. A. Burke, treasurer of the State of Louisiana, The Board of Liquidation of the State of Louisiana, and The State National Bank of New Orleans, fiscal agent of the State of Louisiana.—Issued January 28th, 1880.

STATE OF LOUISIANA:

Third district court for the parish of Orleans.

The State of Louisiana to: 1st, Allen Jumel, auditor of the State of Louisiana; 2d, E. A. Burke, treasurer of the State of Louisiana; 3d, The Board of Liquidation of the State of Louisiana; 4th, The State National Bank of New Orleans, fiscal agent of the State of Louisiana, greeting:

STATE, EX. REL. ELLIOT ET ALS., *vs.* ALLEN JUMEL, AUDITOR, ET AL. } No. 26089.

You are hereby commanded, in the name of the State of Louisiana and of the third district court for the parish of Orleans, to apply without delay and pay to the extinguishment of the interest now due and payable upon the consolidated bonds of the State of Louisiana, held and owned by the relators, and which may hereafter be acquired or held and owned by them, or becoming due and payable upon said bonds, and to the redemption and retirement of such consolidated bonds, as provided for and acquired by the act No. 3 of the year 1874, any and all monies and proceeds of the tax levied or fixed by said act, now in your hands and subject to your control, or which have been in your hands or subject to your control, or which may come in your hands or become subject to your control, not already applied to the payment of interest upon the aforesaid bonds, or to the redemption and retirement of the bonds themselves, as provided for and required in and by act No. 3.

And you are further commanded, in the name of the State of Louisiana and of the third district court for the parish of Orleans, to proceed without delay to collect the tax levied in and by the aforesaid act No. 3 of the year 1874, in the manner and to the extent contemplated by that statute, and to apply and pay all monies realized from such tax to the discharge of the interest and the redemption of the bonds issued under and by virtue of the aforesaid funding act, No. 3 of the sessions of the legislature of Louisiana for the year 1874, until the principal and interest of such bonds be fully extinguished and discharged, and to enforce the act herein above last referred to, and particularly to carry out, perform, and discharge each and every one, and all the ministerial acts, things, and duties required of you by the aforesaid act No. 3, according to the true and full intent and purport of said act, or show cause to the contrary, in open court, on Monday, the 9th day of February, A. D. 1880, at eleven o'clock a. m.

Witness the honorable F. A. Monroe, judge of our said court, this 28th day of January, in the year of our Lord one thousand eight hundred and eighty.

[SEAL.] (Signed) JOE GARIDEL,
Deputy Clerk.

Sheriff's return on alternative writ of mandamus.

To Allen Jumel, auditor of the State of Louisiana; E. A. Burke, treasurer of the State of Louisiana; The Board of Liquidation of the State of Louisiana, and The State National Bank of New Orleans, fiscal agent of the State of Louisiana. Filed January 28th, 1880.

Received January 28th, 1880, and on the 28th day of January, 1880, I served a copy of the within alternative writ of mandamus on Allen Jumel, auditor of the State of Louisiana, through H. Peralta, his chief clerk, in person.

Returned same day.

52 (Signed) O. E. SCOTT,
Deputy Sheriff.

And on the 28th day of January, 1880, I served a copy of within alternative writ of mandamus on E. A. Burke, State treasurer, in person.

Returned same day.

(Signed) O. E. SCOTT,
Deputy Sheriff.

And on the 28th of January, 1880, I served a copy of within writ of alternative mandamus on The Board of Liquidation of the State of Louisiana, through its president, L. A. Wiltz, in person.

Returned same day.

(Signed) O. E. SCOTT,
Deputy Sheriff.

And on the 28th of January, 1880, I served a copy of within writ of alternative mandamus on The State National Bank of New Orleans, fiscal agent of the State of Louisiana, through its president, S. H. Kennedy, in person.

Returned same day.

(Signed) O. E. SCOTT,
Deputy Sheriff.

53 *Answer of defendants.—Filed February 9, 1880.*

STATE EX REL. ELLIOTT ET ALS.
vs.
ALLEN JUMEL, AUDITOR, ET AL. } No. 26089.

3d dist. court, parish of Orleans.

Now come the defendants in the above-entitled case, and, for answer, deny all the allegations contained in the petition of plaintiffs.

Defendants further answer that said plaintiffs never produced any of the matured coupons issued to pay the interest on the bonds described in plaintiffs' petition, nor produced any evidence that they were the legal and just owners of the same.

Defendants further answer that a writ of mandamus has issued in favor of Isidore Newman from the sixth district court, and that the funds demanded by the plaintiffs are claimed by said Newman and by the fiscal agent of the State and by the State of Louisiana to pay the expenses of the government of the State for the year 1880; and the

rights of all these parties to the fund must be settled by a judgment of the supreme court of the State. Defendants further allege
54 the writ of mandamus will only be to compel the performance of a mere ministerial duty, and when the rights of the party praying for the writ have been ascertained.

Defendants allege that the constitution of 1879 forbids them from paying the money to relators, and that this writ is prayed for to compel them to violate a part of the constitution of the State of Louisiana.

Defendants further allege that plaintiffs' proceeding is in reality and fact a direct suit against the State of Louisiana, and that the plaintiffs have never obtained permission to sue the State, and no suit can be maintained without permission from the legislature of Louisiana.

Defendants further allege that the causes of action set forth in the petition show that this is a direct suit against the State, and can only be litigated and tried contradictorily with the State, and that she is the proper party with whom to try these questions, but is not before this court.

Wherefore defendants pray that the writ of mandamus asked
55 for and the suit may be rejected and dismissed, and the defendants pray for costs of court, and for all general relief.

(Signed) J. C. EGAN,
Attorney-General.

Motion made by relators for delay, &c.—Filed February 9th, 1880.

STATE EX. REL. ELLIOTT ET AL. *vs.* ALLEN JUMEL, AUDITOR, ET AL. } No. 26089.

3d dist. court, parish of Orleans.

On motion of Lacey & Butler, attorneys for petitioners and relators, and on suggesting to the court that the return to the alternative writ of mandamus has just been filed, and, upon further suggesting that an examination of such return is essentially necessary before petitioners and relators can properly prepare this cause for hearing or trial—

It is hereby ordered that a delay of 15 days be accorded to counsel for petitioners and relators, for the purpose of making the aforesaid examination, and that this cause be not fixed for hearing or trial during such delay.

56 *Continuance on cause.—Extract from minutes 9th Feb'y*, 1880.

STATE EX. REL. ELLIOTT ET ALS. *vs.* ALLEN JUMEL, AUDITOR, ET AL. } No. 26089.

3d dist. court, parish of Orleans.

And now, before the court, come petitioners and relators for the purpose of traversing the return to the alternative writ of mandamus herein taken, or answer to the petition herein filed; and, thus appearing, they show:

1st. That the ownership and title of relators to the bonds and coupons, as alleged in the original petition, will be shown upon the trial

57 or hearing of this proceeding, and said bonds and coupons will then be produced, should a production thereof be required.

2. The proceedings of the State ex rel. Isidore Newman, sr., vs. Allen Jumel, auditor, et al., No. 10826, sixth district court, parish of Orleans, is not of a character to be pleaded, as lis pendens; nor does it afford respondents in this case any legal or equitable justification for not doing the thing required of them in the petition for a mandamus.

3. The writ of mandamus, herein applied for, demands merely the performance of a ministerial duty, required of the auditor, treasurer, and board of liquidation, by act No. 3, of the sessions of the general assembly of the State of Louisiana for the year 1874.

4. The pr[illegible]sions of the constitution of Louisiana, for the year 1879, referred to in the answer or return of respondents, impairs the obligation of the contract created in favor of relators by the aforesaid act No. 3, of the year 1874; it thereby violates article 1, section 10, of the Constitution of the United States, and is absolutely void and
58 without force or effect.

5. This proceeding is neither directly nor indirectly against the State of Louisiana, nor ought the State to have been sued; it is directed entirely against the auditor, treasurer, and board of liquidation, to compel them, jointly and severally, to perform and discharge official duties purely ministerial in character, and in connection with which they are wholly without discretion; and which duties they refuse to perform and discharge, solely on account of the unconstitutional provisions of the State constitution of 1879, above referred to, greatly to the prejudice and loss of relators.

(Signed) LACEY & BUTLER,
Attorneys for Relators & Petitioners.

Interrogatories to John Elliott and others.—Filed 13th February, 1880.

STATE, EX REL. ELLIOTT ET ALS., *vs.* ALLEN JUMEL, AUDITOR, ET AL. } No. 26089.

3d dist. court, parish of Orleans.

Interrogatories to be propounded to John Elliott, Nicholas Gwynn,
59 and Henry H. Walker, all residents of the city of New York, State of New York; the answers to which, when received, to be used as evidence in support of the application for a mandamus filed by the said Elliott, Gwynn, and Walker.

Interrogatory 1. What is your name, age, place of residence, and occupation?

Interrogatory 2. Have you any information or knowledge connected with any bonds or coupons of interest issued by the State of Louisiana under the funding act of 1874, commonly known and designated as act No. 3 of the sessions of the general assembly of that State for the year hereinabove stated? If yea, you will please identify the said bonds by their numbers, and state all you may know in reference to the ownership and amount of such bonds, the amount of matured and unmatured coupons annexed to such bonds, and the effort, if any, which has been made to realize a collection of the matured interest.

Interrogatory 3. Are you aware of any fact or circumstance connected with the bonds and coupons aforesaid, in reference to
60 which you have already been interrogated? If yea, you will

please state such additional fact or circumstance with the same minuteness and certainty as if you had been specially interrogated in reference thereto.

(Signed) LACEY & BUTLER,
Attorneys for Petitioners & Relators.

Affidavit of Frank N. Butler, annexed to and made part of foregoing interrogatories.—Filed February 13th, 1880.

STATE OF LOUISIANA,
City of New Orleans:

Frank N. Butler, one of the attorneys for relators and petitioners, being duly sworn, doth depose and say that the answers of the Elliott, Gwynn, and Walker to the foregoing interrogatories are material and important to relators upon the trial of this cause; that without such answers relators cannot safely proceed to trial; that the said Elliott, Gwynn, and Walker are now absent from the State of Louisiana, and are in the State of New York; that on account of such absence this affidavit is made by deponent, and not by said Elliott, Gwynn,
61 or Walker; and, finally, that this affidavit is not made for the purpose of delaying the trial of this cause, but merely to obtain the testimony of the aforesaid parties, and to promote and secure the ends of justice.

(Signed) FRANK N. BUTLER.

Sworn to and subscribed before me this 13th day of February, A. D. 1880.

(Signed) P. J. SULLIVAN,
Deputy Clerk.

Notice to cross-interrogatories to att'y general of Louisiana, representing respondents.—Annexed to and made part of the foregoing interrogatories.

SIR: You will please to take notice of the foregoing interrogatories, and cross the same within the delay allowed by law; otherwise a commission will issue without cross-interrogatories.

Very respectfully,
(Signed) LACEY & BUTLER,
Attorneys.

Hon. J. C. EGAN,
Attorney-General of Louisiana, representing Respondents.

62 *Sheriff's return on interrogatories propounded to John Elliott & others.—Filed February 16th, 1880.*

Received February 14th, 1880, and on the 16th day of February, 1880, I served a copy of within interrogatories to Elliott and others, herein named, through J. C. Egan, att'y general, by leaving the same at his office, No. 32 Carondelet street, in the hands of W. B. Sommerville, his clerk, in person.

Returned same day.

(Signed) H. FEEHAN,
Deputy Sheriff.

Supplemental traverse of relators.—Filed February 14, 1880.

STATE, EX REL. ELLIOTT ET ALS.,
vs.
ALLEN JUMEL, AUDITOR, ET AL. } No. 26089.

3d dist. court, parish of Orleans.

And now before the court come petitioners and relators, and leave of the court having been first had and obtained, they deny each and every averment and allegation covered and embraced by the "general denial," made and set forth in respondent's answer or return, and each
63 and every allegation and averment contained in such answer or return, opposed to, or inconsistent with, any fact, statement, allegation or averment disclosed in the original petition herein filed.

Wherefore, and for the reasons set forth in the traverse to the return now filed, these appearers pray that judgment may be entered in conformity to the prayer of the original petition.

(Signed) LACEY & BUTLER,
Attorneys.

Amended petition of John Elliott and others.—Filed February 19th, 1880.

STATE, EX REL. ELLIOTT ET ALS.,
vs.
ALLEN JUMEL, AUDITOR, ET AL. } No. 26089.

3d dist. court, parish of Orleans.

To the honorable the judge of the third district court, parish of Orleans, State of Louisiana:

The supplemental petition of John Elliott, Nicholas Gwynn, and Henry H. Walker, respectfully represents:

That your petitioners are desirous of elucidating and rendering more specific the relief sought after by your petitioners.

64 Wherefore they pray that they may have leave to file this their supplemental petition; and, leave being granted, they further pray, in addition to the relief demanded in their original petition, that in and by the peremptory writ of mandamus, the said defendants, Allen Jumel, auditor; E. A. Burke, treasurer; the board of liquidation created by act No. 3 of the year 1874, and the several members composing and constituting that board, may be commanded and required, notwithstanding the present constitution of the State of Louisiana, to proceed to collect the 5½ mill tax prescribed and provided for in said act No. 3, in strict conformity to the provisions and requirements of that statute.

That the said defendants Allen Jumel, auditor; E. A. Burke, treasurer; the board of liquidation aforesaid, and the several members thereof, in and by the peremptory writ of mandamus aforesaid, may also be respectively commanded and required, out of the proceeds of the aforesaid tax now in the State treasury, or hereafter coming
65 there, to pay the interest and principal of the bonds of the State of Louisiana, issued under the aforesaid funding act No. 3 of the sessions of the general assembly of that State, held and owned by your petitioners, and at the time due and payable.

That the said defendant Allen Jumel, auditor of the State of Louisiana,

in and by the aforesaid writ of mandamus, may be peremptorily commanded and required, to draw his warrant upon the treasurer in favor of your petitioner, or such other party or parties as may become the holder or holders of the bonds and coupons now held and owned by your petitioners, for the payment of such of the aforesaid coupons of interest or bonds aforesaid as may be due and payable at the time of the demand for such warrant being made, and that the said defendant E. A. Burke, treasurer of the State of Louisiana, in and by the peremptory writ of mandamus aforesaid, may be commanded and required to pay the warrant to be issued by the State auditor, out of any money in the State treasury realized from a collection of the tax levied and imposed
66 by law and for the purpose of paying the interest upon the consolidated bonds aforesaid and to retire or pay the bonds themselves.

And, finally, that the said defendants, and each and every one of them, in and by the writ of mandamus aforesaid, may be peremptorily commanded and required to collect the tax prescribed and provided for in the aforesaid act No. 3 of the year 1874, to pay the coupons of interest attached to the State bonds therein referred to, and to retire or pay the bonds themselves, in strict conformity to the provisions, requirements, and enactments of that statute; and not to be prevented from or hindered, or in any manner impeded in so doing by reason, or on account of the present constitution of the State of Louisiana, or any ordinance or provisions therein found or contained.

And your petitioners, as in duty bound, will ever pray, &c.

(Signed) LACEY & BUTLER,
Attorneys for Petitioners.

Affidavit of Frank N. Butler, annexed to and made a part of
67 *amended petition.—Filed February 19th*, 1880.

STATE OF LOUISIANA,
City of New Orleans:

Frank N. Butler, attorney for the petitioners in the foregoing petition named, being duly sworn, doth depose and say that the allegation and averment set forth in the said petition is true to the best of his knowledge, information, and belief.

(Signed) FRANK N. BUTLER.

Sworn to and subscribed before me, this 19th day of February, A. D. 1880.

(Signed) JOE GARIDEL,
Deputy Clerk.

Order to file the foregoing amended petition.

Let the within petition be allowed and filed as prayed for and in accordance with law.

New Orleans, February 19th, 1880.

(Signed) F. A. MONROE,
Judge 3d Dist. Court.

Supplemental traverse of relators John Elliott and others.—Filed 19th Feb'y, 1880.

68 STATE, EX REL. ELLIOTT ET ALS., *vs.* ALLEN JUMEL, AUDITOR, ET AL. } No. 26089.

3d dist. court, parish of Orleans.

And now before the court come the petitioners and relators, and, leave of the court having been first had and obtained, they show the same—

That in the return or answer herein filed the respondents have clearly and distinctly, if at all, put at issue the averment of the petition to the effect that the coupons of interest for the month of January, 1880, had been duly presented to the State officials and payment thereof demanded and refused; but if such defence is pleaded in such return or answer, then these appearers say: That if such coupons of interest had been presented for payment, payment would have been refused. That the defendants, since the adoption of the present constitution of the State of Louisiana, have constantly and continuously manifested and declared their intention to consider such coupons remitted and annulled;

69 have constantly and continuously declared their intention not to pay the same, but to apply the tax, or money collected for that purpose, to the general expenses of the government of the State of Louisiana, and that a presentation and demand of the January coupons, under such circumstances, would have been a vain and useless thing, which the law does not require.

Wherefore, and for the reasons set forth in the original petition, and the traverse, and supplemental traverse now on file, these appearers pray for judgment as demanded in their original and supplemental petitions.

They also pray that their right to traverse by proof any allegation or averment set forth and contained in the aforesaid answer and return be reserved to them.

(Signed) LACEY & BUTLER,
Attorneys.

Order to file supplemental traverse.

Let this supplemental traverse be allowed and filed.
New Orleans, February 19th, 1880.
(Signed) F. A. MONROE, *Judge.*

Motion for commission to issue.—Filed February 20th, 1880.

70 STATE, EX REL. ELLIOTT ET ALS., *vs.* ALLEN JUMEL, AUDITOR, ET AL. } No. 26089.

3d dist. court, parish of Orleans.

On motion of Lacey & Butler, attorneys for intervenors John Elliott, Nicholas Gwynn, and Henry H. Walker—

It is ordered that a commission issue herein to any judge, justice of the peace, or Louisiana commissioner, in and for the city of New York, directing such officer to take the depositions of John Elliott, Nicholas,

Gwynn, and Henry H. Walker, witnesses residing in said city, and to make due return of said commission in 15 days.

Continuance on cause.—"*Extract from minutes*" *23d day February*, 1880.

STATE, EX REL ELLIOTT ET AL.,
vs.
ALLEN JUMEL, AUDITOR, ET AL. } No. 26089.

3d dist. court, parish of Orleans.

By consent of counsel, it is ordered that this case be continued to the 8th day of March, 1880, at 11 o'clock a. m.

71 *Amended petition of relators John Elliott and others.—Filed February*, 23, 1880.

STATE, EX REL. ELLIOTT ET ALS.,
vs.
ALLEN JUMEL, AUDITOR, ET AL. } No. 26089.

3d dist. court, parish of Orleans.

To the honorable the judge of the third district court, parish of Orleans:

The petition of the State of Louisiana upon the relation of John Elliott, Nicholas Gwynn, and Henry H. Walker, and of the said relators, respectfully represents:

That your petitioners are desirous of amending their pleadings in this case, in the following way and manner, viz:

1st. By striking from the prayer of the original petition the following words and sentences: "Held and owned by your petitioners as aforesaid, and which may hereafter be acquired or held and owned by them."

2d. By striking out all of the supplemental petition herein filed on the 19th day of February, 1880, so that the said supplemental petition shall no longer continue to be and remain a part or portion of the pro-
72 ceedings in this cause, without prejudice to relators' rights, as set forth in such original petiton, annexed as hereinbefore set forth.

Wherefore your petitoners pray that the amendments hereinabove set forth may be allowed, and that such other and further orders may be granted as is suited to law and the nature of this case.

(Signed) LACEY & BUTLER,
Attorneys.

Order to file amended petition.

Let this petition be filed and the amendments allowed as therein prayed for.

New Orleans, February 24th, 1880.

(Signed) F. A. MONROE, *Judge.*

Supplemental petition averring demand and protest.—Filed March 5th, 1880.

STATE, EX REL. ELLIOTT ET ALS.,
vs.
ALLEN JUMEL, AUDITOR, ET AL. } No. 26089.

3d dist. court, parish of Orleans.

To the honorable the judge of the third district court, parish of Orleans:

73 The supplemental petition of the State of Louisiana upon the relation of John Elliott, Nicholas Gwynn, and Henry H. Walker, respectfully represents:

That coupons of interest maturing the first day of January, 1880, referred to more particularly in the original petition herein filed, have been duly presented to Allen Jumel, auditor of public accounts, and to Ed. A. Burke, treasurer of the State of Louisiana, and payment thereof demanded; that the said auditor and treasurer refused to pay such coupons of interest on the ground of the prohibition contained in article 3 of State debt ordinance of the present constitution of the State of Louisiana, and that due and legal protest, for non-payment, has been made.

Further they show that the aforesaid auditor, treasurer, and the board of liquidation, established by act No. 3 of the sessions of 1874, have been duly and legally called upon to enforce and carry out the aforesaid act; that they have refused so to do, for the same rea-

74 son presented by the auditor and treasurer for declining payment of the aforesaid coupons of interest; and that a protest has been duly and legally made against the acts and conduct of the said defendants.

Wherefore your petitioners pray for leave to file this, their supplemental petition, and leave being granted, they pray your judgment as demanded in their original petition, together with general relief in the premises.

(Signed) LACEY & BUTLER,
Attorneys.

Order to file supplemental petition.

Let this supplemental petition be filed.

New Orleans, March 5th, 1880.

(Signed) F. A. MONROE, *Judge.*

Petition for removal of cause to the United States circuit court.—Filed March 6th, 1880.

STATE, EX REL. JOHN ELLIOTT ET ALS.,
vs.
ALLEN JUMEL, AUDITOR, ET AL. } No. 26089.

3d dist. court, parish of New Orleans.

75 To the honorable the judge of the third district court for the parish of Orleans, State of Louisiana.

The petition of John Elliott, Nicholas Gwynn, and Henry H. Walker,

all of whom are citizens of the State of New York, respectfully represents:

That the controversy in the above entitled and numbered suit is between citizens of different States, and that your petitioners, Elliott, Gwynn, and Walker, at the time of the commencement of this suit, were, and now are, citizens of the State of New York, and that Allen Jumel, auditor, E. A. Burke, treasurer, the board of liquidation, and the several members of that board, defendants herein, then were, and still are, citizens of the State of Louisiana.

That the present proceeding is a suit at law, of a civil nature, now pending in this honorable court, where the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred dollars.

That in the suit above mentioned there is a controversy which is wholly between citizens of different States, and which can be fully determined as between them, to wit, a controversy between petitioners and the said defendants. That in the present proceeding the controversy is between petitioners, John Elliott, Nicholas Gwynn, and Henry H. Walker, who are all citizens of the State of New York, and the said defendants, Allen Jumel, auditor of the State of Louisiana, E. A. Burke, treasurer of the State of Louisiana, and the Board of Liquidation created by act No. 3 of the sessions of the legislature of Louisiana, held in and for the State aforesaid in the year 1874, composed of Louis A. Wiltz, governor of the State of Louisiana; Samuel McEnery, lieutenant-governor of the State of Louisiana; Allen Jumel, auditor of the State of Louisiana; E. A. Burke, treasurer of the State of Louisiana; Robert N. Ogden, speaker of the house of representatives of the State of Louisiana, and the State National Bank of New Orleans, fiscal agent of the State of Louisiana, who are all citizens of the State of Louisiana, residing in the city of New Orleans in said State.

76

That the said suit is one arising under the laws of the United States, among other things, in this, to wit, that the funding act of the year 1874, designated as act No. 3 of the sessions of the Louisiana legislature of that year, created a contract between the State of Louisiana and the holders of consolidated bonds and coupons issued under that act; that the obligation of such contract has been impaired by the constitution of the State of Louisiana, adopted in the year 1879, and thereby the State constitution aforesaid violates article 1, section 10, of the Constitution of the United States, greatly to the loss and injury of your petitioners.

77

That your petitioners desire to avail themselves of the right to remove the present suit and proceeding from this honorable court to the circuit court of the United States for the district of Louisiana, as is by law in such cases made and provided.

The premises considered, petitioners pray that by an order of this honorable court, and upon petitioners giving bond and security and otherwise complying with the law, this suit, entitled "State of Louisiana, ex rel. John Elliott et als., vs. Allen Jumel, auditor, et al.," No. 26089 of the docket of this honorable court, may be removed for further proceedings and trial into the said circuit court of the United States for the district of Louisiana, at the next regular session thereof, to be begun and held at the city of New Orleans, in the State of Louisiana, on the fourth Monday in April, A. D. 1880; and for that purpose petitioners do herewith tender to the court with this petition the bond required by the statute of the United States, in such case made and provided. And petitioners pray that said bond may be ac-

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cepted and approved, and said cause removed, as herein above prayed for; and petitioners will ever pray, &c.

(Signed) LACEY & BUTLER,
Attorneys for Petitioners.

Order.

Considering the foregoing petition, and the bond tendered therewith by petitioners, and which bond is hereby approved and accepted, let this proceeding and controversy, and every matter and thing connected therewith, be removed for further proceedings and trial to the
79 circuit court of the United States for the district of Louisiana, as prayed for in said petition, and according to law.

New Orleans, La., March 6th, 1880.

(Signed) F. A. MONROE,
Judge of the Third District Court for the Parish of Orleans, State of Louisiana.

Bond for removal of cause to the United States circuit court.—Filed March 6, 1880.

STATE EX REL. ELLIOTT, ET ALS., *vs.* ALLEN JUMEL, AUDITOR, ET ALS. } No. 26089.

3d dist. court, parish of Orleans.

Know all men by these presents that we, John Elliott, Nicholas Gwynn, and Henry H. Walker, as principals, and Alexis Bonnecaze and Geo. S. Lacy, and Frank A. Butler, residents of the city of New Orleans, State of Louisiana, as sureties, are justly and truly, and jointly and severally held and bound unto Allen Jumel, auditor; Ed. A. Burke, treasurer; the board of liquidation constituted by act No. 3 of the sessions of the general assembly of the State of Louisiana, held in the year of our Lord one thousand eight hundred and seven-
80 ty-four, and to Louis A. Wiltz, governor of the State of Louisiana; Sam. McEnery, lieutenant-governor; Allen Jumel, auditor; Ed. A. Burke, treasurer; Will. A. Strong, secretary of state; Robert N. Ogden, speaker of the house of representatives, and the State National Bank of New Orleans, members of said board, and to each of them in solido, and unto their successors, heirs, executors, administrators, and assigns, and each of them in solido, in the full sum of five hundred dollars, lawful money of the United States, for the payment of which, well and truly to be made, we do, by these presents bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents. As witness our hands and seals this 6th day of March, A. D. 1880.

Whereas the above bounden John Elliott, Nicholas Gwynn, and Henry H. Walker, have petitioned the honorable the third district court for the parish of Orleans, for the removal of the cause entitled State, ex rel. John Elliott et als., vs. Allen Jumel, auditor, et al., No. 26089 of the docket of the said third district court, to the circuit court of
81 the United States for the district of Louisiana, wherein the said John Elliott and others are plaintiffs, and the said Allen Jumel, auditor; Ed. A. Burke, treasurer, and the Board of Liquidation, and the several members constituting such board, are defendants, as provided by law;

And whereas the said court has this day granted the prayer of the said petitition: Now the condition of this obligation is such, that if the above-bounden principals shall enter into the said circuit court of the United States for the district of Louisiana, on the first day of the next session thereof, to be held in the city of New Orleans, State of Louisiana, on the fourth Monday of April, A. D. 1880, a copy of the record in said suit, and shall pay all costs that may be awarded by the said circuit court, if the said court shall hold that the same was wrongfully or improperly removed thereto, and shall appear in said circuit court, in said cause, and enter special bail therein, if the same be lawfully required; then, and in that event, this obligation shall be
82 null and void; but otherwise to be and remain in full force and effect.

(Signed) JOHN ELLIOTT,
NICHOLAS GWYNN,
HENRY H. WALKER,
Per LACEY & BUTLER,
Attorneys.

(Signed) GEO. S. LACEY.
FRANK N. BUTLER.
O. BONNECAZE.

Approved:
(Signed) F. A. MONROE,
Judge of the Third District Court for the Parish of Orleans.

Certificate.

UNITED STATES OF AMERICA,
State of Louisiana:

Third district court, parish of Orleans.

I, Benjamin Armbruster, clerk of the third district court for the parish of Orleans, do hereby certify that the foregoing ninety-six (96) pages do contain a complete, true, and correct transcript of all the proceedings had and documents filed in the suit entitled "State of La., ex rel. John Elliott et als., vs. Allen Jumel, auditor, et al," No. 26089 of the docket of said court.

83 In testimony whereof I have hereunto set my hand and affixed the seal of the said court at the city of New Orleans, on the twentieth day of March, in the year of our Lord one thousand eight hundred and eighty, and the 104th year of the Independence of the United States of America.

[SEAL.] (Signed) BEN. ARMBRUSTER.

I, Frank A. Monroe, sole judge of the third district court for the parish of Orleans, do hereby certify that Benjamin Armbruster is the clerk of said court; that the same is a court of record having general civil jurisdiction; and that the signatnre of Ben. Armbruster clerk, to the foregoing certificate is in the proper handwriting of him, the said Ben. Armbruster, clerk; to his official acts as such, full faith and credit are due and owing; and I do further certify that his attestation is in due form of law.

Given under my hand at the city of New Orleans, on the twentieth day of March, in the year of our Lord one thousand eight
84 hundred and eighty, and in the 104th year of the Independence of the United States of America.

[SEAL.] (Signed) F. A. MONROE, *Judge.*

I, Benjamin Armbruster, clerk of the third district court for the parish of Orleans, do hereby certify that Frank A. Monroe, whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, sole judge of the third district court for the parish of Orleans, duly elected and commissioned, and qualified as such; and that said attestation is in due form of law.

Witness my hand and the seal of said court this twentieth day of March, in the year of our Lord one thousand eight hundred and eighty, and the 104th year of the Independence of the United States of America.

[SEAL.] (Signed) BEN. ARMBRUSTER.

Citation to Allen Jumel, auditor.—Issued March 29th, 1880.

85 UNITED STATES OF AMERICA,
District of Louisiana:

EX REL. JOHN ELLIOTT ET ALS.
vs.
ALLEN JUMEL, AUDITOR, ET ALS. } No. 9052.

Circuit court of the United States, fifth circuit, district of Louisiana

To ALLEN JUMEL, *Auditor:*

You are hereby summoned to comply with the demand contained in the amended & supplemental petition, of which a copy accompanies this citation, or to deliver your answer to the same in the office of the clerk of the circuit court of the United States, fifth circuit and district of Louisiana, in the city of New Orleans, in ten days after the service hereof, which delay is increased one day for every ten miles your place of residence is distant from New Orleans, the place where the court is held.

Witness the honorable Morrison R. Waite, C'ief Justice of the Supreme Court of the United States of America, at the city of New Orleans, this 29th day of March, A. D. one thousand eight hundred and
86 eighty, and of the Independence of the United States of America the 104th year.

[SEAL.] Teste: (Signed) F. V. COUPLAND,
D'y Clerk.

Marshal's return.

Received March 30th, 1880, by the U. S. marshal, and on April 2d, 1880, I served a copy of the within citation and the accompanying amended supplemental petition on Allen Jumel, auditor of accounts for the State of Louisiana, by delivering the same to him in person in the city of New Orleans.

(Signed) E. S. CURRY,
D'y U. S. Marshal.

Citation to Ed. A. Burke, treasurer.—Issued March 29th, 1880.

UNITED STATES OF AMERICA,
District of Louisiana:

EX REL. JOHN ELLIOTT ET ALS.
vs.
ALLEN JUMEL, AUDITOR, ET AL. } No. 9052.

Circuit court of the United States, fifth circuit, district of Louisiana.

To EDWARD A. BURKE, *Treasurer:*

87 You are hereby summoned to comply with the demand contained in the amended and supplemental petition, of which a copy accompanies this citation, or to deliver your answer to the same, in the office of the clerk of the circuit court of the United States, fifth circuit and district of Louisiana, in the city of New Orleans, in ten days after the service hereof, which delay is increased one day for every ten miles your place of residence is distant from New Orleans, the place where the court is held.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at the city of New Orleans, this 29th day of March, A. D. one thousand eight hundred and eighty, and of the Independence of the United States of America the 104th year.

[SEAL.] Testee: (Signed) T. V. COUPLAND,
D'y Clerk.

Marshal's return.

88 Received March 30th, 1880, by the U. S. marshal, and on April 2d, 1880, I served a copy of the within citation and the accompanying amended supplemental petition on Edward A. Burk, esq., treasurer of the State of Louisiana, by delivering the same to him in person in the city of New Orleans.

(Signed) E. S. CURRY,
D'y U. S. Marshal.

Citation to State National Bank of New Orleans.—Issued March 29, 1880.

UNITED STATES OF AMERICA,
District of Louisiana:

EX REL. JOHN ELLIOTT ET ALS.
vs.
ALLEN JUMEL, AUDITOR, ET AL. } No. 9052.

Circuit court of the United States, fifth circuit, district of Louisiana.

To State National Bank of New Orleans:

You are hereby summoned to comply with the demand contained in the amended and supplemental petition, of which a copy accompanies this citation, or to deliver your answer to the same in the office of the clerk of the circuit court of the United States, fifth circuit and district of Louisiana, in the city of New Orleans, in ten days after the service hereof, which delay is increased one day for every ten miles

89

your place of residence is distant from New Orleans, the place where the court is held.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at the city of New Orleans, this 29th day of March, A. D. one thousand eight hundred and eighty, and of the Independence of the United States of America the 104th year.

[SEAL.] Teste: (Signed) T. V. COUPLAND,
Dy Clerk.

Marshal's return.

Received March 30th, 1880, by the U. S. marshal, and on April 1st, 1880, I served a copy of the within citation, and the accompanying amended supplemental petition, on the State National Bank of New Orleans by delivering the same to Samuel H. Kennedy, esq., the president of the aforesaid national bank, in person, in the city of New Orleans.

(Signed) E. S. CURRY,
Dy U. S. Marshal.

90 *Citation to the Board of Liquidation, through L. A. Wiltz, governor, the president thereof.—Issued March 29, 1880.*

UNITED STATES OF AMERICA,
District of Louisiana:

EX REL. JOHN ELLIOTT ET ALS.
vs.
ALLEN JUMEL, AUDITOR, ET AL. } No. 9052.

Circuit court of the United States, fifth circuit, district of Louisiana.

To the Board of Liquidation, through L. A. Wiltz, gov'r, and president thereof:

You are hereby summoned to comply with the demand contained in the amended and supplemental petition, of which a copy accompanies this citation, or to deliver your answer to the same, in the office of the clerk of the circuit court of the United States, fifth circuit and district of Louisiana, in the city of New Orleans, in ten days after the service hereof, which delay is increased one day for every ten miles your place of residence is distant from New Orleans, the place where the court is held.

91 Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at the city of New Orleans, this 29th day of March, A. D. one thousand eight hundred and eighty, and of the Independence of the United States of America the 104th year.

[SEAL.] Testee: (Signed) T. V. COUPLAND.
Dy Clerk.

Marshal's return.

Received March 30th, 1880, by the U. S. marshal, and on April 2d, 1880, I served a copy of the within citation, and the accompanying amended supplemental petition, on the Board of Liquidation, through L.

A. Wiltz, governor, and president thereof, by delivering the same to L. A. Wiltz, governor, &c., in person, in the city of New Orleans.

(Signed) E. S. CURRY,
Fly U. S. Marshal.

Motion and order: Case fixed for trial.—Extracts from the minutes, April term, 1880.

92 NEW ORLEANS, *Monday, May 3d*, 1880.

Court met pursuant to adjournment.

Present, Hon. E. C. Billings, district judge.

STATE OF LA., EX REL. JOHN ELLIOTT ET als., *vs.* ALLEN JUMEL, AUDITOR, ET AL. } No. 9052.

On motion of Lacey & Butler, of counsel for relators, it is hereby ordered that this cause be fixed for hearing and trial on Monday, the 17th May, 1880, at 11 a. m., and that the respondents, or their attorney, be notified of this order.

Peremptory exception.—Filed May 17th, 1880.

United States circuit court.

STATE OF LOUISIANA, EX REL. JOHN ELLIOTT ET ALS., *vs.* ALLEN JUMEL, AUDITOR, ET AL. } No. 9052.

Now come the defendants in the above-entitled case, and ask leave of the court to file this peremptory exception.

Def'ts allege that they, as individuals, have no interest whatever in the issues presented in this case, and this proceeding is against them in their official capacity as a part of the executive department of the government of the State of Louisiana. Def'ts allege that this court has no jurisdiction over the parties or the subject-matter in controversy.

93

Def'ts further allege that to proceed against them in their official capacity is in reality a proceeding against the State of Louisiana, and that this court has no jurisdiction over the State of Louisiana.

Def'ts further allege, as the real and only party in interest is the State, these questions cannot be tried for want of proper parties.

Def'ts further allege that this court has no jurisdiction to supervise and control the executive department of the government of the State of Louisiana, or any of the officers composing the same.

Def'ts further allege that the questions sought to be submitted to the court are not judicial, but belong to the political and legislative departments of government.

94 Wherefore def'ts pray that this exception be sustained and the case dismissed.

(Signed) J. C. EGAN,
Att'y-General.

Continuance of cause & exception.—Extract from the minutes of May 17th, 1880.

STATE OF LA., EX REL. JOHN ELLIOTT ET ALS., *vs.* ALLEN JUMEL, AUDITOR, ET AL. } No. 9052.

By consent of counsel, this cause, as well as the exception this day filed, are continued to be tried together, till Tuesday, 1st June, 1880, at 11 a. m.

Continuance of cause.—Extracts from the minutes of June 1, 1880.

STATE OF LA., EX REL. JOHN ELLIOTT ET ALS., *vs.* ALLEN JUMEL ET AL. } No. 9052.

This cause came on for trial—Lacey & Butler, for relator; J. C.
95 Egan, att'y-general, for def'ts; and after hearing counsel, it was ordered that the cause be continued till next term.

Motion & order, cause assigned for hearing.—Extract from the minutes, November term, 1880.

NEW ORLEANS, *Monday, November 1st*, 1880.

Court met pursuant to adjournment.
Present: Hon. E. C. Billings, district judge.

STATE OF LA., EX REL. JOHN ELLIOTT ET ALS., *vs.* ALLEN JUMEL, AUDITOR, ET AL. } No. 9052.

On motion of Lacey & Butler, attorneys for the relators, ordered that this cause be assigned for trial on Tuesday, 9th instant, at 11 a. m., and that respondents be notified hereof.

Traverse to supplemental return.—Filed Nov. 13th, 1880.

U. S. circuit court, district of Louisiana.

STATE OF LOUISIANA, EX REL. JOHN ELLIOTT et als., *vs.* ALLEN JUMEL, AUDITOR, ET AL. } No. 9052.

96 The exception to the jurisdiction of the court having been ordered to be cumulated with, and to make a part of respondents' return to the alternative writ of mandamus, now come into court the State of Louisiana and the several relators herein, and traversing the supplemental return aforesaid, they show:

That this court is fully invested with jurisdiction, not only over the subject-matter of the present litigation, but over the several respondents therein.

Wherefore these appearers pray that respondents may take nothing by their aforesaid supplemental return; that such return may be disregarded and held for naught; that a peremptory mandamus may issue

as prayed for, and that appearers may recover costs, and have general relief in the premises.

(Signed) LACEY & BUTLER,
Attorneys.

Order: Cause reassigned.—Extract from the minutes of November 25th, 1880.

97 STATE OF LOUISIANA, EX REL. JOHN Elliott et als., *vs.* ALLEN JUMEL, AUDITOR, ET AL. } No. 9052.

Upon the application of counsel for the respondents, it is ordered by the court that this cause be reassigned for the 14th day of December, 1880, at 11 o'clock a. m., and that counsel for the relators be notified thereof.

Peremptory exception.—Filed December 9th, 1880.

Circuit court of the United States, district of La.

STATE OF LOUISIANA, EX REL. ELLIOTT ET ALS., *vs.* ALLEN JUMEL, E. A. BURKE, & THE BOARD OF Liquidation. } No. 9052.

The defendants, in the suit aforesaid, severally and in their personal and official character, appear and file this peremptory exception to the petition of the said plaintiff, and to the jurisdiction of this honorable court to take cognizance thereof, or to give the prayers contained therein in whole or part.

98 These defendants allege that on the first day of January, A. D. 1880, and thence hitherto, they have been without any capacity, faculty, or function whatsoever derived from the constitution or the laws of the State of Louisiana, or other source, to examine or inquire whether the relators are owners of the coupons described in their petition, or whether the same establish a debt against the State of Louisiana, or to be valid coupons for any purpose of auditing, paying, or validating the same; nor have these defendants in their possession, or under their control, any sum or sums of money of the State of Louisiana which the State has charged for the payment of the said coupons, and delegated to these defendants an authority to use for the purpose of paying the said coupons, as described in the petition.

These defendants allege that they are not empowered by the State of Louisiana to appear in this court to answer whether she be a debtor to the plaintiffs in this suit on the said coupons, or for any other

99 cause; nor to determine, nor answer, to any question to arise upon them, nor to stand in judgment for the State of Louisiana in respect to any question of indebtedness of this State.

Neither has the State of Louisiana empowered or authorized these defendants to answer whether her constitution and laws making disposition of moneys arising from taxation and paid into her treasury among her general funds, are obnoxious to controversy or impeachment by the relators. These authorities and faculties the State has reserved for her own control, and does not acknowledge any one to be competent to

represent her as a defendant in a suit at law, brought by individuals in the courts of the State or of the United States.

The State of Louisiana is a State of the Union. Her power to raise a revenue by taxation of property within the State and to carry on the operations of government are not subject to any judicial control or supervision, except with her consent.

These defendants deny that they are authorized to answer in
100 place of the State to the allegations in the petition, as to the indebtment of Louisiana to the relators, or the failure of the State to pay the same; or to the appropriation of money for other purposes, that were applicable to such indebtment. These are questions for the State to answer for herself in such manner as she may appoint.

These defendants say they hold their offices and authority subordinate to the constitution of the State now in force and have no capacity, faculty, or authority, to do any act in opposition to the mandates of that constitution; nor can they exceed the authority which has been intrusted to them under it, and that all of the charges made in the petition that imply that the plaintiffs propose to substitute them for the State, and to require them to employ the supreme and sovereign powers of the State without consent or authority of the State, and without any appointment or delegation of the State.

Wherefore defendants pray judgment of the said petition, and
101 except peremptorily to the same, as showing no case within the jurisdiction of this court, and no title to the relief prayed for.

(Signed) J. C. EGAN,
Att'y General.

Let this exception be filed.
Dec'r 9th, 1880.
(Signed) EDWARD C. BILLINGS, *Judge.*

Continuance of cause.—Extract from the minutes of December 21, 1880.

STATE, EX. REL. JOHN ELLIOTT ET ALS., *vs.* ALLEN JUMEL, AUDITOR, &C. } No. 9052.

In the presence of the counsel of the respective parties, it was ordered by the court that this cause be continued till Tuesday, 11th January, 1881, at 11 a. m.

Waiver of jury.—Filed January 11th, 1881.

In the U. S. circuit court.

THE STATE OF LOUISIANA, EX REL. ELLIOTT et al., *vs.* ALLEN JUMEL, E. A. BURKE, & THE BOARD OF Liquidation. } No. 9052.

102 In the above-entitled case, it is agreed that the jury shall be waived this the 11th of Jan., 1881.

(Signed) J. C. EGAN,
Att'y General.

(Signed) LACEY & BUTLER,
For Relators.

Submission of cause.—Extract from the minutes of January 11th, 1881.

STATE, EX REL. JOHN ELLIOTT ET ALS., *vs.* A. JUMEL, AUDITOR, ET AL. } No. 9052.

This cause came on for hearing, the parties having filed a stipulation waiving the intervention of a jury; and, after hearing the pleadings and the evidence, the cause was submitted to the court, who took time to consider.

Findings of fact and conclusions of law, marked X.—Filed March 23, 1881.

U. S. circuit court, district of Louisiana.

STATE OF LOUISIANA, EX REL. JOHN ELLIOTT et als., *vs.* ALLEN JUMEL, AUDITOR, ET AL. } No. 9052.

103 The court finds the following facts as the facts of this case:

At a session of the general assembly of the State of Louisiana, held in the year 1874, an act was duly passed providing for the funding of obligations of the State by their exchange for bonds, and was approved by the governor of such State January 24th, 1874. The statute aforesaid is found on page 39 of the bound sessions laws of Louisiana, for the year 1874.

That in and by the statute aforesaid it is, among other things, provided that, for the purpose of consolidating and reducing the floating and bonded debt of the State, the governor, lieutenant-governor, auditor, treasurer, secretary of state, and speaker of the house of representatives of the State of Louisiana, shall cause to be prepared and to issue bonds to be known as "consolidated bonds of the State of Louisiana," of the denominations of $100, $500, and $1,000, to the amount of $15,000,000.00, or so much thereof as may be necessary, all payable 40 years from the 1st day of January, A. D. 1874, to be

104 numbered consecutively, payable to bearer, and to bear interest at the rate of seven per cent. per annum, payable semi-annually, in the city of New York and the city of New Orleans, on the 1st day of July and January of each year, and coupons for such interest to be annexed thereto, said interest and principal to be payable in lawful money of the United States.

That in and by the act aforesaid, it was also provided that the governor, lieut.-governor, auditor, treasurer, secretary of state, and speaker of the house of representatives of the State of Louisiana, shall constitute a board of liquidation, and that a majority of said board should elect a fiscal agent for the State, who should be a member of said board.

It was also enacted, in and by the act aforesaid, commonly known as the funding act of 1874, that the bonds, authorized and required by that statute to be prepared and issued, should be signed by the governor, auditor, and secretary of state; that the coupons of in-

105 terest should be signed by the auditor and treasurer, and that such bonds should be exchanged by the board of liquidation for all valid outstanding bonds of the State and all valid warrants drawn

previous to the passage of said act by the respective auditors of public accounts of the State on the treasurer thereof, except warrants issued by the auditor in payment of the constitutional officers of the State, at the rate of 60 cents in consolidated bonds, for one dollar in outstanding bonds and valid warrants.

That it was also enacted in the aforesaid funding law that a tax of 5½ mills on the dollar of the assessed value of all real and personal property in the State of Louisiana shall annually be levied; and in and by said law such annual tax of 5½ mills was actually levied and imposed upon such property, and was ordered and required to be collected, for the purpose of paying the interest and principal of the aforesaid consolidated bonds of the State of Louisiana; and the revenues derived from the said tax by the said act were set apart and appropriated
106 to the payment of such principal and interest exclusively.

That in and by said statute or funding act of 1874 it was provided that if, during any year, there should be a surplus arising from said tax, after paying all interest falling due in that year, such surplus shall be used for the purchase and retirement of the bonds authorized by that act; said purchase to be made by the said board of liquidation from the lowest offers, after due notice; provided that the total tax for interest, and all other State purposes, except the support of the public schools, shall nevere thereafter exceed 12½ mills on the dollar. The interest tax, in and by the funding act aforesaid, was made a continuing annual tax until the said consolidated bonds shall be paid or redeemed, principal and interest; and the said appropriation, in and by the said act, was made a continuing annual appropriation. And in and by said law it was made the duty of the auditor, treasurer, and board of liquidation, respectively, to collect said tax annually, and pay
107 said interest, and redeem said bonds, until the same shall be fully discharged.

That it was also prescribed and enacted in the said act that each and every one of the enactments and provisions thereof should be a contract between the State of Louisiana and each and every holder and bearer of the bonds and coupons issued under that statute.

That the funding act, or statute aforesaid, is more fully and with great particularity and correctness set forth in the original petition filed in this cause.

That at the same sessions of the general assembly of the State of Louisiana, held in the year 1874, another act was duly passed entitled "An act proposing amendments to the constitution of the State of Louisiana," known and designated as act No. 4, approved January 24th, 1874, in and by which last-mentioned act the following amendment to the constitution of the State of Louisiana was proposed and submitted to the people of that State:

"The issue of consolidated bonds, authorized by the general
108 assembly of the State at its regular session in the year 1874, is hereby declared to create a valid contract between the State and each and every holder of said bonds, which the State shall by no means and in no wise impair. The said bonds shall be a valid obligation of the State in favor of any holder thereof, and no court shall enjoin the payment of the principal or interest thereof, or the levy and collection of the tax therefor; and to secure such levy, collection, and payment the judicial power shall be exercised when necessary. The tax required for the payment of the principal and interest of said bonds shall be assessed and collected each and every year until the bonds shall be paid, principal and interest; and the proceeds shall be paid by the treasurer

of the State to the holders of said bonds as the principal and interest of the same shall fall due. And no further legislation or appropriation shall be requisite for the said assessment and collection and for such payment from the treasury."

On the 2d day of November, 1874, a general election was held
109 by the people of the State of Louisiana to approve or to reject the amendment to the State constitution herein above particularly referred to; that at said election the following vote was cast in connection with such amendment, which resulted as follows:

For approval, 69,419.

Against approval, 60,070.

And the returning board of the State of Louisiana, pursuant to authority vested in them by act No. 98, approved November 20th, 1872, did duly certify, declare, and return that the foregoing amendment was approved as a part of the constitution of the State of Louisiana.

That relators acting for and in behalf of themselves and others, and under and by virtue of the enactments and provisions contained in the aforesaid funding act and constitutional amendment, acquired and obtained, and upon the trial of this cause produced in open court and offered in evidence twenty consolidated bonds of the State of Louisiana issued under the aforesaid act of 1874, a copy of which bonds, for
110 greater certainty, is hereunto annexed and made a part of this statement of facts; and that they, the said relators, acting as aforesaid, also acquired and obtained, and upon the trial of this cause produced in open court, and offered in evidence, 2,713 coupons of interest, detached from certain consolidated bonds of the State of Louisiana issued under the funding act of 1874, amounting in the aggregate to the sum of $78,900.00, and all made payable on the 1st day of January, 1880.

All of the coupons of interest above referred to are similar in their purport, and are to the same tenor and effect as the following:

$35.] [$35.

The State of Louisiana will pay the bearer, on the first day of January, 1880, thirty-five dollars, in lawful money of the United States in New Orleans or New York, at the option of the holder, being six months' interest on consolidated bond No. 7958. Coupon No. 12.

CHAS. CLINTON, *Auditor.* AN'E DUBUCLET, *Treasurer.*

The difference between the 2,713 coupons of interest, and the
111 copy above made lies in the amount of coupon, and the number of bond with which it is identified. In other respects they are alike.

That endorsed upon the back of the aforesaid consolidated bonds is the following:

"The payment of the principal and interest of this bond is provided for by the levy of an annual tax, fixed and guaranteed by the constitution of the State, and not repealable by legislative enactment. State debt limited to $15,000,000.00, and taxes for all purposes, except for schools, limited to 12½ mills by the constitution of the State."

That on the 1st day of January, 1880, the present State constitution of Louisiana, adopted in convention in 1879, went into full force and effect, and that under and by virtue of that constitution Allen Jumel, at the date of the commencement of these proceedings, was and is now auditor of the State of Louisiana. E. A. Burke was then and now is

treasurer of the said State, and the Board of Liquidation, created
112 by the funding act No. 3 of 1874, was then and is now composed of Louis A. Wiltz, then and now governor of said State; Sam. McEnery, then and now lieut. governor; Allen Jumel, then and now State auditor; E. A. Burke, then and now treasurer; Will A. Strong, then and now secretary of state; Robert N. Ogden, then and now speaker of the house of representatives, and the State National Bank of New Orleans, then and now fiscal agent of the State of Louisiana, and that the several parties aforesaid are now in the active discharge of the duties of their offices respectively, under the constitution of Louisiana, adopted in convention in the year 1879.

That in the aforesaid constitution, and making a part and portion thereof, is the following provision:

"ART. 209. The State tax on property for all purposes whatever, including expenses of government, schools, levees, and interests, shall not exceed, in any one year, six mills on the dollar of its assessed valuation."

So also the following:

"The interest to be paid on the consolidated bonds of the
113 State of Louisiana be, and is hereby, fixed at two per cent. per annum for five years from the first of January, 1880; three per cent. per annum for fifteen years, and four per cent. per annum thereafter, payable semi-annually, and there shall be levied an annual tax sufficient for the full payment of said interest, not exceeding three mills, the limit of all State tax being hereby fixed at six mills."

"The coupons of said consolidated bonds, falling due the first of January, 1880, be, and the same is hereby remitted, and any interest tax collected to meet said coupons are hereby transferred to defray the expenses of the State government."

That on the 25th day of February, 1880, relators, through James Fahey, a notary public of the city of New Orleans, caused a written demand to be made upon Governor Wiltz, Allen Jumel, auditor of public accounts and E. A. Burke, treasurer, then composing the board of liquidation, or members thereof, calling upon them to comply
114 with the provisions of the aforesaid funding act No. 3, of the year 1874; that the said governor, president of said board, declined to answer such demand; and that the said auditor and treasurer stated: "That they could not comply with the request made of them, owing to the prohibition contained in act 3, State debt ordinance, of the constitution of the State of Louisiana, adopted 23d July, 1879, and recently promulgated."

That on the 27th of February, 1880, relators, through the same notary, made a similar demand upon Jumel and Burke, as auditor and treasurer, and to it a similar reply was given.

That on the 25th days of February and March, 1880, relators, through the notary aforesaid, presented to Allen Jumel, auditor, and to E. A. Burke, treasurer of the State of Louisiana, at their respective offices in the State house, in said State, 2,713 coupons of interest of the consolidated bonds of the State of Louisiana, amounting in the aggregate to $78,900.00, and requested payment thereof; that the said auditor
115 and treasurer severally answered, that the said coupons could not be paid, owing to the prohibition contained in act 3 of State debt ordinance of the constitution of the State of Louisiana adopted 23d July, 1879, and then recently promulgated.

That all of the aforesaid 2,713 coupons were of the following purport,

except as to the number of the bond with which the coupon is identified, and the amount of the coupon:

$35.] [$35.

The State of Louisiana, will pay the bearer on the 1st day of January, 1880, thirty-five dollars, in lawful money of the United States, in New Orleans or New York, at the option of the holder, being six months' interest on consolidated bond No. 2250. Coupon No. 12.

CHAS. CLINTON, *Auditor.*

ANTOINE DUBUCLET, *Treasurer.*

And that the said notary, on the 25th day of February and March, 1880, protested the aforesaid coupons for non-payment.

Act No. 77, of the session of the general assembly of Louisiana, for the year 1880, is signed by R. N. Ogden, speaker of the house of
116 representatives, and S. D. McEnery, lieu't-gov'r and president of the senate; it is approved by L. A. Wiltz, governor, and authenticated by Will A. Strong, secretary of state. In that act it is prescribed, that for the calendar year 1880, and for each and every succeeding calendar year, annual taxes are levied, amounting in the aggregate to six mills on the dollar of the assessed valuation of all property within the State of Louisiana, except such as is expressly exempted from taxation by the constitution of 1879; that 3 mills on the dollar is levied for the purpose of paying the interest on the consolidated bonds of the State, as fixed by the constitution, in the ordinance relative to the State debt, to pay the interest on the new issue of State bonds, to be exchanged for said consolidated bonds under said ordinance; and that not more than $240,000.00 of the interest to so be collected shall be applied to the interest due on said consolidated bonds.

It was shown by the testimony of Allen Jumel, auditor, and E. A. Burke, treasurer, taken on the trial of this cause, that it was
117 their intention, if not interfered with by the courts, to carry out all the provisions of the existing constitution of the State of Louisiana, and that they officially ignored the funding act of 1874, and refused to carry the same into effect—more particularly those provisions of the aforesaid funding law referring to the collection of the 5½ mill tax, and the application and payment of any monies arising therefrom to the payment of the interest upon the consolidated bonds issued under act 3, of the sessions of 1874, which became due and payable on the 1st day of January, A. D. 1880.

It was also shown upon the trial of this cause that no proceedings are being taken to enforce the collection of the 5½ mill tax under act 3 of 1874; and that the only tax being collected by the State officials for the payment of interest is the 3 mills tax levied by the legislature, under the existing constitution of Louisiana.

The amount of bonds issued under the funding law of 1874, now outstanding and unpaid, according to the testimony of the State
118 auditor, is about $12,000,000.00, say on the 1st day of January, 1881, $11,843,028.44.

According to the evidence of E. A. Burke, State treasurer, there are in the hands of that officer about $300,000.00, collected under the levy imposed by the funding act of 1874, to meet the interest upon the consolidated bonds issued under that act, maturing January 1st, 1880; but by the constitution of 1879 ordered to be remitted and transferred to meet the expenses of the State government, and claimed to be held by

the State treasurer under that constitution; and that all of these funds came into the custody of the treasurer under the new constitution, and that the respondents all hold office by virtue of election under said new constitution; that they have refused to pay out these funds to relators, and that they hold and are disposing of the same under and according to the new constitution, under which they received the same.

The State treasurer has presented certain exhibits showing the condition of the consolidated bond debt, and the same are hereunto
119 annexed as a part and portion of this finding of facts. The facts developed by those statements are better shown by the exhibits themselves than by a disclosure in any other manner. Those statements are marked G and G[2].

Act No. 3.—Referred to and made part of the foregoing finding of facts.

No. 3. An act to provide for funding obligations of the State by exchange for bonds; to provide for principal and interest of said bonds; to establish a board of liquidation, to authorize certain judicial proceedings against it, to define and punish violations of this act, to prohibit certain officers diverting funds, except as provided by law, and to punish violations therefor, to levy a continuing tax, and provide a continuing appropriation for said bonds, to make a contract between the State and holders of said bonds, to prohibit injunctions in certain cases, to limit the indebtedness of the State, and to limit State taxes, to annul certain grants of State aid, to prohibit the
120 modification, novation, or extension of any contract heretofore made for State aid, to provide for the receipt of certain warrants for certain taxes, and to repeal all conflicting laws.

SECTION 1. Be it enacted by the senate and house of representatives of the State of Louisiana in general assembly convened, That for the purpose of consolidating and reducing the floating and bonded debt of the State, the governor, lieutenant-governor, auditor, treasurer, secretary of state, and speaker of the house of representatives are hereby authorized to cause to be prepared, and to issue bonds, to be known as "Consolidated bonds of the State of Louisiana," of the denominations of one hundred, five hundred, and one thousand dollars, to the amount of fifteen millions of dollars, or so much thereof as may be necessary, all payable forty years from the first day of January, 1874, and all to be numbered consecutively, and made payable to bearer, and to bear interest at the rate of seven per cent. per annum, payable semi-annually in the city of New York and city of New Orleans, on the
121 first day of July and January of each year, and coupons for such interest shall be annexed thereto; said interest and principal to be payable in lawful money of the United States.

SEC. 2. Be it further enacted, etc., That the parties designated in the foregoing section shall constitute a board of liquidation, and a majority of said board shall elect a fiscal agent for the State, who shall be a member of said board.

SEC. 3. Be it further enacted, etc., That the bonds authorized by section one shall be signed by the governor, auditor, and secretary of state, and the coupons shall be signed by the auditor and treasurer; and when so prepared said bonds shall be exchanged by the board of liquidatiod for all valid warrants drawn previous to the passage of this act by the respective auditors of public accounts of the State on the treasurer thereof, except warrants issued by the auditor in payment of

the constitutional officers of the State, at the rate of sixty cents in consolidated bonds for one dollar in outstanding bonds and all valid
122 warrants; provided that the holder of any bond or valid warrant rejected by a majority of said board may apply by petition to the proper court for relief, and if final judgment shall be rendered in his favor against said board, it shall be the duty of said board to fund his said claim in bonds at the rate provided by this act; and provided further, that if any member of said board of liquidation shall knowingly audit and fund any illegal claim against the State he shall be deemed guilty of a misdemeanor and shall, on conviction, be fined not less than five thousand dollars and be imprisoned not less than two years, at the discretion of the court. And any person knowingly procuring the same to be done shall be subject to the same penalty.

SEC. 4. Be it further enacted, etc., That the exchange of the bonds or valid warrants authorized by this act shall be effected by said board of liquidation in the cities of New Orleans and New York.

SEC. 5. Be it further enacted, etc., That the consolidated bonds
123 herein authorized shall be held and used by said board of liquidation for the purpose of exchange aforesaid; said bonds shall be used for no other purpose or purposes than as authorized by this act, and any member of the board of liquidation using or attempting to use said bonds or any of them for any other purpose or purposes shall, on conviction thereof, be punished by a fine of not less than five thousand dollars and by imprisonment at hard labor for not less than one year.

SEC. 6. Be it further enacted, etc., That notice of the adoption of this act shall be published by said board in one or more journals of New Orleans, New York, London, Paris, and Amsterdam.

SEC. 7. Be it further enacted, etc., That a tax of five and a half mills on the dollar of the assessed value of all real and personal property in the State is hereby annually levied, and shall be collected, for the purpose of paying the interest and principal of the consolidated bonds herein authorized, and the revenue derived therefrom is hereby
124 set apart and appropriated to that purpose and no other; and that it shall be deemed a felony for the fiscal agent, or any officer of the State or board of liquidators, to divert the said fund from its legitimate channel as provided, and upon conviction the said party shall be liable to imprisonment for not more than ten years nor less than two, at the discretion of the court. If there shall, during any year, be a surplus arising from said tax after paying all interest falling due in that year, such surplus shall be used for the purchase and retirement of bonds authorized by this act, said purchases to be made by the said board of liquidation from the lowest offers after due notice; provided, that the total tax for interest and all other State purposes, except the support of public schools, shall never hereafter exceed twelve and a half mills on the dollar. The interest tax aforesaid shall be a continuing annual tax until the said consolidated bonds shall be paid or redeemed, principal and interest; and the said appropriation shall
125 be a continuing annual appropriation during the same period, and this levy and appropriation shall authorize and make it the duty of the auditor and treasurer and the said board, respectively, to collect said tax annually and pay said interest and redeem the said bonds until the same shall be fully discharged.

SEC. 8. Be it further enacted, etc., That the bonds and valid warrants outstanding at the time of the passage of this act, shall, as fast as they are received in exchange for consolidated bonds, be cancelled and de-

stroyed by the said board of liquidation, and consolidated bonds purchased, as provided for in section seven of this act, shall be cancelled and destroyed after public notice has been given of the same in the official journal of the State, in the presence of as many citizens as may desire to be present, in like manner, and within ten days after such destruction, in each case, a proces' verbal of the same shall be published, and a report made to the general assembly on the first Monday of every year, by said board.

126 SEC. 9 Be it further enacted, etc. That it shall be the duty of the auditor, in his next annual report, to give a detailed account of the proceedings had under this act, including the amount of new bonds issued, the amount of old bonds and valid warrants cancelled, the amount of the same outstanding, and the cost of the exchange: and annually thereafter a full and exact statement of the condition of the public debt under the operations of this act.

SEC. 10. Be it further enacted, etc., That any judge, tax collector, or any officer of the State obstructing the execution of this act, or any part of it, or failing to perform his official duty thereunder, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by imprisonment not exceeding five years, and by fine not exceeding two thousand dollars, at the discretion of the court; provided, that this section shall in no wise prejudice or affect the criminal proceeding under section five of this act.

SEC. 11. Be it further enacted, etc., That each provision of this
127 act shall be, and is hereby, declared to be a contract between the State of Louisiana and each and every holder of the bonds issued under this act.

SEC. 12. Be it further enacted, etc., That all grants of State aid heretofore made, whether of bonds, indorsements, subscriptions of stock, or otherwise, which have become lapsed or forfeited, be, and the same are hereby, repealed and annulled, nor shall the State hereafter modify, novate, or extend any contract heretofore made for the giving of State aid in any form or under any pretext.

SEC. 13. Be it further enacted, etc., That the entire State debt, prior to the year of our Lord nineteen hundred and fourteen, shall never be increased, directly or indirectly, beyond the sum of fifteen millions of dollars hereby authorized, it being the intent and object of this act, and of the exchanges to be effected thereunder, to reduce and restrict the whole indebtedness of the State to a sum not exceeding fifteen millions of dollars, and to agree with the holders of the consolidated bonds to be
128 issued hereunder that said indebtedness shall not be increased beyond said sum during said period.

SEC. 14th. Be it further enacted, etc., That any tax collector who shall turn over any money or warrants by him collected, to any person except to the State treasurer, shall be deemed guilty of a misdemeanor, and shall, on conviction, be subject to the penalties prescribed in section ten of this act, and shall, in addition thereto, be liable in damages in double the amount so turned over; and any State officer requiring or demanding that said taxes shall be turned over to him, except the treasurer of the State, shall be liable, on conviction, to the same penalties as are prescribed in this section.

SEC. 15. Be it further enacted, etc., That from and after the passage of this act until the first day of July, 1874, all valid auditor's warrants, issued for debts due prior to January 1, 1874, shall be received for all back taxes, licenses, and interest and penalties thereon due prior to said first of January, 1874, except two mills for school fund, three mills for

levee construction and repair fund, and two mills to the interest fund for the purpose of paying any interest in arrears accruing on the bonded debt of the State prior to the passage of this act.

SEC. 16. Be it further enacted, etc., That no court, or judge thereof, shall have power to enjoin the payment of principal or interest of any bond issued under this act, or the collection of the special tax therefor, or to injoin any officer of State or parish in receiving warrants, as is prescribed in section fifteen of this act.

SEC. 17. Be it further enacted, etc., That all acts or parts of acts in conflict with this act or any section thereof are hereby declared to be repealed, and that this act shall take effect from and after its passage.

(Signed) CHARLES W. LOWELL,
Speaker of the House of Representatives.

(Signed) C. C. ANTOINE,
Lieutenant-Governor and President of the Senate.

(Signed) WILLIAM P. KELLOGG,
Governor of the State of Louisiana.

A true copy:

P. G. DESLONDE,
Secretary of State.

Document marked "(1)," referred to and made part of the foregoing finding of facts.

U. S. circuit court, district of Louisiana.

STATE OF LOUISIANA, EX REL. JOHN ELLIOTT et als.,
vs.
ALLEN JUMEL, AUDITOR, ET AL. } No. 9052.

20 bonds, issued under act No. 3 of 1874, offered in evidence by relators, of $1,000 each, numbered as follows: 101, 983, 1177, 1187, 1188, 1189, 1190, 1195, 1196, 1197, 2250, 4334, 4715, 4772, 5438, 6064, 6732, 7240, 7595, 7660—20 bonds, numbered as above, $20,000.00.

(Signed) LACEY & BUTLER,
Attorneys.

The above is a true and correct list of the bonds actually offered in evidence upon the trial of the application for a writ of mandamus in No. 9052, U. S. circuit court, dist. of Louisiana.

New Orleans, January 15, 1881.

(Signed) GEO. S. LACEY.
" FRANK N. BUTLER.

Document marked "(2)," referred to and made part of the foregoing finding of facts.

List of coupons detached from consolidated bonds of the State of Louisiana, issued under act No. 3 of 1874, maturing January 1, 1880.

No. of bond:	No. of coupon.	Amount of coupon.
7959	12	$35
7957	"	35
1—7958	"	35
942	"	35
941	"	35
2052	"	35
7881	"	35
2024	"	35
2623	"	35
2— 118	"	17 50
4252	"	35
4253	"	35
4254	"	35
4255	"	35
4256	"	35
4257	"	35
1016	"	3 50
132 1017	12	3 50
1018	"	3 50
3—1019	"	3 50
150	"	17 50
4— 630	"	3 50
4339	"	35
4340	"	35
1038	"	3 50
1039	"	3 50
1040	"	3 50
5—1041	"	3 50
5793	"	35
7927	"	35
105	"	3 50
924	"	3 50
2869	"	3 50
2245	"	3 50
2372	"	3 50
1669	"	3 50
226	"	3 50
1668	"	3 50
727	"	3 50
730	"	3 50
731	"	3 50
732	"	3 50
2234	"	3 50
2235	"	3 50
49	"	3 50
2230	"	3 50
726	"	3 50
133 729	"	3 50
2399	"	3 50
186	"	3 50
2069	"	3 50
1975	"	3 50
3256	"	3 50
3106	"	3 50
3141	"	3 50
3139	"	3 50
2270	"	3 50
725	"	3 50
2215	"	3 50
1911	"	3 50
1121	"	3 50
851	"	3 50
849	"	3 50
789	"	3 50
763	"	3 50
761	"	3 50
762	"	3 50

No. of bond.	No. of coupon.	Amount of coupon.
2512	"	$3 50
2318	"	3 50
6—3241	"	3 50
9615	"	35 00
9616	"	35 00
9617	"	35 00
946	"	17 50
3892	"	3 50
3768	"	3 50
3769	"	3 50
8—3770	"	3 50
134 6618	12	35
6619	"	35
9—6620	"	35
608	"	35
1607	"	35
8362	"	35
7286	"	35
5952	"	35
11—1036	"	35
4625	"	35
4676	"	35
4677	"	35
4679	"	35
4680	"	35
13—7063	"	35
7059	"	35
7062	"	35
7065	"	35
7056	"	35
7057	"	35
7060	"	35
7061	"	35
7058	"	35
7055	"	35
14— 666	"	35
700	"	35
1090	"	35
1091	"	35
1094	"	35
1214	"	35
135 2960	"	35
2980	"	35
5249	"	35
4805	"	35
15—6676	"	35
6675	"	35
2381	"	3 50
2382	"	3 50
2383	"	3 50
2384	"	3 50
179	"	3 50
180	"	3 50
181	"	3 50
187	"	3 50
213	"	3 50
1966	"	3 50
16—6747	"	35
6748	"	35
17—3993	"	35
4607	"	35
116	"	17 50
481	"	3 50
482	"	3 50
483	"	3 50
484	"	3 50
485	"	3 50

List of coupons, &c.—Continued.

No. of bond.	No. of coupon.	Amount of coupon.
486	"	$3 50
487	"	3 50
488	"	3 50
489	"	3 50
490	"	3 50
136 491	12	3 50
18—54	"	35
98	"	35
2144	"	35
9552	"	35
9553	"	3 50
4151	"	3 50
4152	"	3 50
4153	"	3 50
4154	"	3 50
2578	"	3 50
1795	"	17 50
1796	"	17 50
1797	"	17 50
1798	"	17 50
1799	"	17 50
1800	"	17 50
1801	"	17 50
1802	"	17 50
19—1803	"	17 50
2493	"	35
2494	"	35
2495	"	35
2496	"	35
2497	"	35
2498	"	35
2499	"	35
2500	"	35
2502	"	35
2503	"	35
137 2504	"	35
2505	"	35
2506	"	35
2507	"	35
2508	"	35
2509	"	35
2510	"	35
2511	"	35
2512	"	35
20— 5804	"	35
5805	"	35
5806	"	35
5808	"	35
5809	"	35
21— 3827	"	35
657	"	3 50
3831	"	35
3826	"	35
3830	"	35
3828	"	35
3829	"	35
22— 5807	"	35
1585	"	35
3216	"	35
3654	"	35
23— 3655	"	35
843	"	17 50
3390	"	3 50
24— 3391	"	3 50
194	"	17 50
220	"	17 50
138 8151	12	35
7897	"	35
1082	"	35
2386	"	35
3925	"	35
3926	"	35
5726	"	35

No. of bond.	No. of coupon.	Amount of coupon.
6703	"	$35
25— 5228	"	35
3	"	35
1518	"	35
3346	"	35
415	"	35
26— 3465	"	35
3603	"	35
3604	"	35
3605	"	35
3606	"	35
3607	"	35
3608	"	35
3609	"	35
27— 589	"	3 50
8627	"	35
8626	"	35
28— 8628	"	35
3602	"	35
4107	"	35
5774	"	35
5775	"	35
5776	"	35
139 129	12	17 50
251	"	17 50
253	"	17 50
92	"	3 50
106	"	3 50
520	"	3 50
521	"	3 50
522	"	3 50
566	"	3 50
568	"	3 50
508	"	3 50
594	"	3 50
999	"	3 50
1000	"	3 50
1001	"	3 50
1002	"	3 50
1734	"	3 50
1735	"	3 50
1736	"	3 50
1737	"	3 50
1738	"	3 50
1739	"	3 50
1740	"	3 50
1741	"	3 50
29— 1742	"	3 50
731	"	17 50
839	"	17 50
5262	"	35 00
5263	"	35 00
5264	"	35 00
5265	"	35 00
140 5266	12	35
2417	"	35
2375	"	35
2374	"	35
2345	"	35
2344	"	35
2720	"	35
4204	"	35
1683	"	35
1525	"	35
1524	"	35
1523	"	35
1522	"	35
1521	"	35
629	"	35
628	"	35
626	"	35
4037	"	35
4526	"	35

List of coupons, &c.—Continued.

No. of bond.	No. of coupon.	Amount of coupon.
2430	"	$35
2431	"	35
2432	"	35
8178	"	35
7760	"	35
9822	"	35
4809	"	35
2549	"	35
1504	"	35
522	"	35
5768	"	35
141 5742	"	35
5771	"	35
4248	"	35
2429	"	35
2718	"	35
5566	"	35
5658	"	35
676	"	35
69	"	35
1498	"	35
2582	"	35
2465	"	35
1705	"	35
8436	"	35
7385	"	35
8206	"	35
8183	"	35
7819	"	35
6217	"	35
8396	"	35
8397	"	35
4376	"	35
5894	"	35
6665	"	35
5268	"	35
5267	"	35
1198	"	35
1199	"	35
1207	"	35
1208	"	35
1209	"	35
142 1210	12	35
1211	"	35
1217	"	35
79	"	35
80	"	35
81	"	35
82	"	35
427	"	35
664	"	35
674	"	35
686	"	35
953	"	35
955	"	35
2418	"	35
2419	"	35
2420	"	35
2421	"	35
2422	"	35
2423	"	35
2424	"	35
2425	"	35
2426	"	35
2427	"	35
30— 2428	"	35
101	"	35
983	"	35
1177	"	35
1188	"	35
1187	"	35
1189	"	35
143 1190	"	35
1195	"	35
1196	"	35
30½— 1197	"	35
594	"	35
1055	"	35
239	"	35
1899	"	35
7939	"	35
7839	"	35
7942	"	35
7799	"	35
5770	"	35
31— 238	"	35
32— 5581	"	35
1191	"	35
1344	"	35
1368	"	35
1397	"	35
33— 2111	"	35
5319	"	35
5320	"	35
5321	"	35
5322	"	35
5323	"	35
5324	"	35
5325	"	35
5326	"	35
5327	"	35
5328	"	35
5329	"	35
144 5330	12	35
5508	"	35
5509	"	35
5510	"	35
5511	"	35
5512	"	35
5513	"	35
5514	"	35
5515	"	35
5516	"	35
5517	"	35
5518	"	35
5519	"	35
5520	"	35
5521	"	35
5522	"	35
5523	"	35
5524	"	35
5525	"	35
5526	"	35
5527	"	35
5528	"	35
5529	"	35
5530	"	35
5531	"	35
5532	"	35
5533	"	35
5534	"	35
5535	"	35
5536	"	35
145 5537	"	35
5538	"	35
5539	"	35
5540	"	35
5541	"	35
6542	"	35
5543	"	35
5544	"	35
5545	"	35
5546	"	35
5547	"	35
5548	"	35
5549	"	35

List of coupons, &c.—Continued.

No. of bond.	No of coupon.	Amount of coupon.
5550	"	35
5551	"	35
5552	"	35
5553	"	35
7879	"	35
1614	"	3 50
34— 2838	"	3 50
3312	"	3 50
3940	"	3 50
3941	"	3 50
3942	"	3 50
1429	"	17 50
1430	"	17 50
36— 1431	"	17 50
939	"	17 50
35— 3719	"	3 50
2747	"	35
37— 9624	"	35
146 266	12	$35
287	"	35
581	"	35
582	"	35
583	"	35
584	"	35
585	"	35
586	"	35
587	"	35
588	"	35
589	"	35
590	"	35
1003	"	35
1004	"	35
1005	"	35
1006	"	35
1399	"	35
1487	"	35
1551	"	35
1846	"	35
1887	"	35
2085	"	35
2466	"	35
3254	"	35
3538	"	35
4432	"	35
4574	"	35
4831	"	35
5151	"	35
5442	"	35
147 6187	"	35
6279	"	35
6336	"	35
6473	"	35
6474	"	35
6513	"	35
6598	"	35
6795	"	35
7046	"	35
7199	"	35
7316	"	35
7377	"	35
7824	"	35
8108	"	35
8123	"	35
8383	"	35
8392	"	35
8426	"	35
8444	"	35
8455	"	35
8457	"	35
8458	"	35
8617	"	35
9195	"	35

No. of bond.	No of coupon.	Amount of coupon.
9846	"	35
55	"	17 50
782	"	17 50
943	"	17 50
962	"	17 50
1413	"	17 50
1484	"	17 50
148 1667	12	$17 50
38— 1788	"	17 50
8297	"	35
6698	"	35
3955	"	35
4343	"	35
4344	"	35
3886	"	35
96	"	17 50
39— 97	"	17 50
969	"	35
5253	"	35
5254	"	35
5255	"	35
7438	"	35
7252	"	35
9570	"	35
3999	"	35
1057	"	35
1969	"	35
165	"	35
7163	"	35
7291	"	35
7454	"	35
7456	"	35
3246	"	35
3858	"	35
2336	"	35
8110	"	35
40— 8795	"	35
149 4228	"	35
8772	"	35
41— 9994	"	35
2651	"	35
2652	"	35
2653	"	35
2654	"	35
2655	"	35
42— 2656	"	35
4381	"	35
4382	"	35
4383	"	35
4384	"	35
4385	"	35
4386	"	35
4387	"	35
4388	"	35
5771	"	35
5765	"	35
5766	"	35
7952	"	35
7953	"	35
839	"	17 50
1051	"	3 50
1052	"	3 50
1053	"	3 50
1054	"	3 50
43— 3367	"	3 50
492	"	17 50
1839	"	17 50
4863	"	35 00
150 4864	12	$35
4865	"	35
4866	"	35
369	"	17 50

List of coupons, &c.—Continued.

No. of bond.	No. of coupon.	Amount of coupon.
44— 370	"	17 50
1412	"	3 50
1413	"	3 50
1414	"	3 50
1415	"	3 50
1416	"	3 50
1417	"	3 50
1418	"	3 50
1419	"	3 50
1420	"	3 50
45— 1421	"	3 50
9636	"	35
9637	"	35
9638	"	35
9639	"	35
9640	"	35
9641	"	35
9642	"	35
9643	"	35
9644	"	35
9645	"	35
9646	"	35
9647	"	35
8483	"	35
8484	"	35
8485	"	35
151 8486	"	35
8487	"	35
8488	"	35
8489	"	35
8490	"	35
46— 3880	"	3 50
1662	"	35
1663	"	35
1664	"	35
1665	"	35
47— 1666	"	35
7192	"	35
6816	"	35
7812	"	35
7339	"	35
7750	"	35
7813	"	35
3696	"	35
7171	"	35
7340	"	35
8403	"	35
7259	"	35
9568	"	35
7642	"	35
9567	"	35
4373	"	35
4639	"	35
4758	"	35
4364	"	35
4366	"	35
4367	"	35
152 9569	12	$35
6819	"	35
8453	"	35
5840	"	35
5841	"	35
5839	"	35
5842	"	35
5764	"	35
5838	"	35
338	"	35
3245	"	35
7277	"	35
4835	"	35
4824	"	35
2957	"	35
8205	"	35
7646	"	35
7690	"	35
5196	"	35
6110	"	35
6837	"	35
5884	"	35
5813	"	35
3913	"	35
3911	"	35
2456	"	35
251	"	35
1849	"	35
1850	"	35
48— 1170	"	35
153 164	"	35
308	"	35
467	"	35
468	"	35
484	"	35
554	"	35
1030	"	35
1066	"	35
1821	"	35
1945	"	35
1997	"	35
2269	"	35
3265	"	35
3412	"	35
3447	"	35
3876	"	35
3891	"	35
3905	"	35
4092	"	35
4288	"	35
4430	"	35
4828	"	35
5592	"	35
5677	"	35
6060	"	35
6098	"	35
6783	"	35
6784	"	35
6788	"	35
49— 6989	"	35
1681	"	35
154 50— 5686	12	$35
51— 6607	"	35
581	"	17 50
582	"	17 50
2131	"	3 50
52— 2132	"	3 50
53— 4486	"	35
4515	"	35
4521	"	35
4461	"	35
832	"	17 50
489	"	17 50
3755	"	3 50
3756	"	3 50
53— 3757	"	3 50
3229	"	35
54— 3230	"	35
9630	"	35
9633	"	35
9634	"	35
9631	"	35
9632	"	35
9635	"	35
8143	"	35
4439	"	35
4438	"	35
4437	"	35
5494	"	35

List of coupons, &c.—Continued.

	No. of bond.	No. of coupon.	Amount of coupon.
	4830	"	35
	4170	"	35
155	3934	"	35
	3809	"	35
	3797	"	35
	3484	"	35
	3228	"	35
	3227	"	35
	3222	"	35
	2744	"	35
	2743	"	35
	1787	"	35
	1446	"	35
	1088	"	35
	1079	"	35
	1061	"	35
	1059	"	35
	1025	"	35
	1013	"	35
	195	"	35
	6308	"	35
	6309	"	35
	6307	"	35
	6306	"	35
	6305	"	35
	6304	"	35
	6303	"	35
	4445	"	35
	4444	"	35
	4443	"	35
	4442	"	35
	4441	"	35
	4440	"	35
156	3226	12	$35
	2405	"	17 50
	2360	"	17 50
	2413	"	17 50
	2406	"	17 50
	2404	"	17 50
	2403	"	17 50
	2410	"	17 50
	2417	"	17 50
	2416	"	17 50
	2415	"	17 50
	2408	"	17 50
	2402	"	17 50
	2412	"	17 50
	2407	"	17 50
	2409	"	17 50
	2414	"	17 50
	2355	"	17 50
	2357	"	17 50
	2411	"	17 50
	2356	"	17 50
	2361	"	17 50
	2359	"	17 50
	2358	"	17 50
	272	"	17 50
	4106	"	3 50
	3423	"	3 50
	2110	"	3 50
	1081	"	3 50
	1080	"	3 50
157	1079	"	3 50
	1078	"	3 50
	1077	"	3 50
	1076	"	3 50
	1075	"	3 50
	1074	"	3 50
	1073	"	3 50
	492	"	3 50
	3424	"	3 50
	4107	"	3 50
	4105	"	3 50
	4108	"	3 50
	673	"	3 50
	2049	"	3 50
	4202	"	3 50
	4203	"	3 50
	2053	"	3 50
	4200	"	3 50
	3590	"	3 50
	4305	"	3 50
	4306	"	3 50
	4191	"	3 50
	4190	"	3 50
	4192	"	3 50
55—	4201	"	3 50
	7966	"	35
	842	"	17 50
	3376	"	3 50
	3377	"	3 50
56—	3378	"	3 50
	4720	"	35
158	4721	12	$35
	4722	"	35
57—	175	"	3 50
	5197	"	35
	7589	"	35
	8117	"	35
	9180	"	35
	9181	"	35
	2145	"	35
	7250	"	35
	7791	"	35
	7947	"	35
58—	8080	"	35
	2585	"	17 50
	2586	"	17 50
	2587	"	17 50
	2588	"	17 50
	2589	"	17 50
59—	2590	"	17 50
	602	"	17 50
60—	2204	"	3 50
	4723	"	35
	4724	"	35
	4725	"	35
61—	176	"	3 50
	4726	"	35
	4727	"	35
	4728	"	35
	4729	"	35
	4730	"	35
159	4731	"	35
	4732	"	35
	4733	"	35
	4734	"	35
	177	"	3 50
62—	178	"	3 50
	1393	"	35
	2895	"	35
	7844	"	35
	3571	"	35
	2385	"	35
	6544	"	35
	6341	"	35
	6147	"	35
	6058	"	35
	1099	"	35
	343	"	17 50
	66	"	17 50
	1	"	17 50
	367	"	17 50
	2498	"	17 50
	2578	"	17 50

List of coupons, &c.—Continued.

	No. of bond.	No. of coupon.	Amount of coupon.
	2487	"	17 50
	2526	"	17 50
	2518	"	17 50
	2497	"	17 50
	2462	"	17 50
	911	"	17 50
	2459	"	17 50
	382	"	17 50
	723	"	17 50
160	2464	12	$17 50
	344	"	17 50
	434	"	17 50
	897	"	17 50
63—	1728	"	17 50
	4240	"	3 50
65—	4242	"	3 50
	7011	"	35
	658	"	35
	6543	"	35
	200	"	35
	441	"	35
	493	"	35
	2658	"	35
	1914	"	35
	671	"	35
	540	"	17 50
66—	495	"	17 50
	302	"	17 50
67—	905	"	17 50
	9003	"	35
	9157	"	35
	9058	"	35
	9159	"	35
	9160	"	35
	9161	"	35
	9162	"	35
	9163	"	35
	9164	"	35
	9165	"	35
161	9166	"	35
	9167	"	35
	9168	"	35
	9169	"	35
	9170	"	35
	9171	"	35
	9172	"	35
	9173	"	35
	9174	"	35
	9175	"	35
	9176	"	35
	9177	"	35
	9178	"	35
	9179	"	35
	9180	"	35
	9181	"	35
	9182	"	35
	9183	"	35
	9184	"	35
	9185	"	35
	9186	"	35
	9187	"	35
	9188	"	35
	9189	"	35
	9190	"	35
	9191	"	35
	9192	"	35
	9193	"	35
	9194	"	35
	9195	"	35
	9196	"	35
162	9197	12	$35
	9198	"	35
	9199	"	35
	9200	"	35
	9201	"	35
	9202	"	35
	9203	"	35
	9204	"	35
	9205	"	35
	9206	"	35
	9207	"	35
	9208	"	35
	9209	"	35
	9210	"	35
	9211	"	35
	9212	"	35
	9213	"	35
	9214	"	35
	9215	"	35
	9216	"	35
	9217	"	35
	9218	"	35
	9219	"	35
	9220	"	35
	9221	"	35
	9224	"	35
	9223	"	35
	9224	"	35
	9225	"	35
	9226	"	35
163	9227	"	35
	9228	"	35
	9229	"	35
	9230	"	35
	9231	"	35
	9232	"	35
	9233	"	35
	9234	"	35
	9235	"	35
	9236	"	35
	9237	"	35
	9338	"	35
	9239	"	35
	9240	"	35
	9241	"	35
	9242	"	35
	9243	"	35
	9244	"	35
	9245	"	35
	9246	"	35
	9864	"	35
	9865	"	35
	9866	"	35
	9867	"	35
	9868	"	35
	9869	"	35
	9870	"	35
	9871	"	35
	9872	"	35
	9873	"	35
	9874	"	35
164	9875	12	$35
	9876	"	35
	9877	"	35
	9878	"	35
	9879	"	35
	9880	"	35
	9881	"	35
	9882	"	35
	9883	"	35
	9884	"	35
	9885	"	35
	9886	"	35
	9887	"	35
	9888	"	35
	9889	"	35

List of coupons, &c.—Continued.

	No. of bond.	No. of coupon.	Amount of coupon.
	9890	"	35
	9891	"	35
	9892	"	35
	9893	"	35
	9894	"	35
	9895	"	35
	9896	"	35
	9897	"	35
	9898	"	35
	9899	"	35
	9900	"	35
	9901	"	35
	9902	"	35
	9903	"	35
	9904	"	35
165	9905	"	35
	9906	"	35
	9907	"	35
	9908	"	35
	9909	"	35
	9910	"	35
	9911	"	35
	9912	"	35
	9913	"	35
	9914	"	35
	9915	"	35
	9916	"	35
	9917	"	35
	9918	"	35
	9919	"	35
	9920	"	35
	9921	"	35
	9922	"	35
	9923	"	35
	9924	"	35
	9925	"	35
	9926	"	35
	9927	"	35
	9928	"	35
	9929	"	35
	9930	"	35
	9931	"	35
	9932	"	35
	9933	"	35
	9934	"	35
	9935	"	35
166	9936	12	$35
	9937	"	35
	9938	"	35
	9939	"	35
	9940	"	35
	9941	"	35
	9942	"	35
	9943	"	35
	9944	"	35
	9945	"	35
	9946	"	35
	9947	"	35
	9948	"	35
	9949	"	35
	9950	"	35
	9951	"	35
	9952	"	35
	9953	"	35
	9954	"	35
	9955	"	35
	9956	"	35
	9957	"	35
	9958	"	35
	9960	"	35
	9959	"	35
	9961	"	35
	9962	"	35
	9963	"	35
	9998	"	35
	9999	"	35
167	10000	"	35
	872	"	17 50
	915	"	17 50
	916	"	17 50
	917	"	17 50
	918	"	17 50
	919	"	17 50
	920	"	17 50
	921	"	17 50
	922	"	17 50
	923	"	17 50
	924	"	17 50
	925	"	17 50
	926	"	17 50
	927	"	17 50
	928	"	17 50
	929	"	17 50
	930	"	17 50
	931	"	17 50
	932	"	17 50
	933	"	17 50
	1055	"	17 50
	1056	"	17 50
	1057	"	17 50
	1058	"	17 50
	1059	"	17 50
	1060	"	17 50
	1061	"	17 50
	1062	"	17 50
	1063	"	17 50
	1064	"	17 50
168	1065	12	$17 50
	1066	"	17 50
	1067	"	17 50
	1068	"	17 50
	1069	"	17 50
	1070	"	17 50
	1071	"	17 50
	1072	"	17 50
	1073	"	17 50
	1074	"	17 50
	1075	"	17 50
	1076	"	17 50
	1077	"	17 50
	1078	"	17 50
	1079	"	17 50
	1080	"	17 50
	1081	"	17 50
	1082	"	17 50
	1083	"	17 50
	1084	"	17 50
	1085	"	17 50
	1086	"	17 50
	1087	"	17 50
	1088	"	17 50
	1089	"	17 50
	1091	"	17 50
	1092	"	17 50
	1090	"	17 50
	1093	"	17 50
	1094	"	17 50
169	1095	"	17 50
	1096	"	17 50
	1097	"	17 50
	1098	"	17 50
	1099	"	17 50
	1100	"	17 50
	1101	"	17 50
	1102	"	17 50
	1103	"	17 50

List of coupons, &c.—Continued.

No. of bond.	No. of coupon.	Amount of coupon.
1104	"	17 50
1105	"	17 50
1106	"	17 50
1107	"	17 50
1108	"	17 50
1109	"	17 50
1110	"	17 50
1111	"	17 50
1112	"	17 50
1113	"	17 50
1114	"	17 50
1115	"	17 50
1116	"	17 50
1117	"	17 50
1118	"	17 50
1119	"	17 50
1120	"	17 50
1121	"	17 50
1122	"	17 50
1123	"	17 50
1124	"	17 50
1125	"	17 50
170 1126	12	$17 50
1127	"	17 50
1128	"	17 50
1129	"	17 50
1130	"	17 50
1131	"	17 50
1132	"	17 50
1133	"	17 50
1134	"	17 50
1135	"	17 50
1136	"	17 50
1137	"	17 50
1138	"	17 50
1139	"	17 50
1140	"	17 50
1141	"	17 50
1142	"	17 50
1143	"	17 50
1144	"	17 50
1145	"	17 50
1146	"	17 50
1147	"	17 50
1148	"	17 50
1149	"	17 50
1150	"	17 50
1151	"	17 50
1152	"	17 50
1153	"	17 50
1154	"	17 50
1155	"	17 50
171 1156	"	17 50
1157	"	17 50
1158	"	17 50
1159	"	17 50
1160	"	17 50
1161	"	17 50
1162	"	17 50
1163	"	17 50
1164	"	17 50
1165	"	17 50
1166	"	17 50
$542	"	3 50
3584	"	3 50
3712	"	3 50
3713	"	3 50
3907	"	3 50
3908	"	3 50
3909	"	3 50
68— 3910	"	3 50
69— 21	"	35
6628	"	35
1120	"	35
5616	"	35
70— 5866	"	35
4484	"	35
4497	"	35
5225	"	35
5682	"	35
5795	"	35
6691	"	35
6692	"	35
172 6693	12	$35
6077	"	35
5723	"	35
4557	"	35
4556	"	35
6170	"	35
5722	"	35
72— 3658	"	35
5495	"	35
5496	"	35
5497	"	35
5498	"	35
5499	"	35
5500	"	35
5501	"	35
5502	"	35
5503	"	35
5504	"	35
5505	"	35
5506	"	35
73— 1611	"	3 50
2102	"	35
74— 2911	"	35
2727	"	35
2094	"	35
2400	"	35
1037	"	35
3689	"	35
2761	"	35
8125	"	35
173 2095	"	35
2610	"	35
1072	"	35
623	"	35
847	"	17 50
4286	"	3 50
4287	"	3 50
4288	"	3 50
606	"	3 50
75— 3403	"	3 50
3695	"	35
8140	"	35
607	"	3 50
608	"	3 50
3417	"	3 50
76— 3418	"	3 50
1709	"	35
3736	"	35
6947	"	35
2774	"	35
2249	"	35
4392	"	35
7656	"	35
2240	"	35
6834	"	35
173	"	35
2530	"	35
4161	"	35
1335	"	35
3251	"	35
3526	"	35
174 4105	12	$35
8125	"	35

List of coupons, &c.—Continued.

No. of bond.	No. of coupon.	Amount of coupon.	No. of bond.	No. of coupon.	Amount of coupon.
2159	"	35	539	"	35 00
2491	"	17 50	1032	"	35 00
2503	"	17 50	1284	"	35 00
2502	"	17 50	1731	"	35 00
2505	"	17 50	176 1740	12	$35
2490	"	17 50	2487	"	35
2448	"	17 50	2657	"	35
2474	"	17 50	2658	"	35
2447	"	17 50	2659	"	35
2479	"	17 50	2784	"	35
2486	"	17 50	2870	"	35
2494	"	17 50	3347	"	35
2450	"	17 50	3400	"	35
2499	"	17 50	3414	"	35
2460	"	17 50	3864	"	35
2816	"	3 50	3869	"	35
2817	"	3 50	4426	"	35
2393	"	3 50	5115	"	35
2353	"	3 50	5116	"	35
1132	"	3 50	5346	"	35
1383	"	3 50	5762	"	35
2864	"	3 50	5617	"	35
3634	"	3 50	8354	"	35
1152	"	3 50	8725	"	35
2936	"	3 50	9182	"	35
469	"	3 50	16	"	17 50
468	"	3 50	71	"	17 50
467	"	3 50	418	"	17 50
175 466	"	3 50	584	"	17 50
336	"	3 50	867	"	17 50
281	"	3 50	80— 372	"	3 50
279	"	3 50	4836	"	35
499	"	3 50	8787	"	35
278	"	3 50	8788	"	35
277	"	3 50	177 8789	"	35
3636	"	3 50	3962	"	35
3637	"	3 50	3192	"	35
3638	"	3 50	1979	"	35
3639	"	3 50	2460	"	35
77— 3640	"	3 50	7354	"	35
7595	"	35 00	6944	"	35
5438	"	35 00	9976	"	35
6732	"	35 00	4090	"	3 50
2250	"	35 00	738	"	17 50
4772	"	35 00	598	"	17 50
4760	"	35 00	1479	"	17 50
7240	"	35 00	308	"	17 50
4334	"	35 00	315	"	17 50
6064	"	35 00	1480	"	17 50
78— 4715	"	35 00	1448	"	17 50
9549	"	35 00	1449	"	17 50
9550	"	35 00	1722	"	17 50
79— 9551	"	35 00	1723	"	17 50
283	"	35 00	1724	"	17 50
437	"	35 00			

E. & O. E.

The foregoing list was made up by us from coupons of interest actually offered in evidence upon the trial of the application for a mandamus in suit 9052, U. S. circuit court, district of Louisiana, and we hereby certify the same to be true and correct.

New Orleans, Jan'y 15th, 1881.

(Signed) GEO. S. LACEY.

" FRANK N. BUTLER.

178 *Document marked "(3)," referred to and made part of the foregoing finding of facts.*

List of coupons maturing January 1st, 1880, detached from consolidated bonds of State of Louisiana, issued under act 3 of 1874.

No. of bond.	No. of coupon.	Amount of coupon.	No. of bond.	No. of coupon.	Amount of coupon.
6766	12	$35	8502	"	"
6767	"	"	8503	"	"
6768	"	"	8504	"	"
6769	"	"	8505	"	"
6770	"	"	8506	"	"
6771	"	"	8507	"	"
8230	"	"	8508	"	"
8231	"	"	8509	"	"
8232	"	"	8510	"	"
8233	"	"	8511	"	"
8234	"	"	8512	"	"
8235	"	"	8513	"	"
8236	"	"	8514	"	"
8237	"	"	8515	"	"
8238	"	"	8516	"	"
8239	"	"	8517	"	"
8240	"	"	8518	"	"
8241	"	"	8519	"	"
8242	"	"	8520	"	"
8243	"	"	8521	12	$35
8244	"	"	8522	"	"
8245	"	"	8523	"	"
8246	"	"	8524	"	"
8247	"	"	8525	"	"
8248	"	"	8526	"	"
8249	"	"	8527	"	"
8260	"	"	8528	"	"
8261	"	"	8529	"	"
8262	"	"	8530	"	"
8263	"	"	8531	"	"
8264	"	"	8532	"	"
8265	"	"	8533	"	"
8266	"	"	8534	"	"
8267	"	"	8535	"	"
8268	"	"	8536	"	"
8269	"	"	8537	"	"
8270	"	"	8538	"	"
8271	"	"	8539	"	"
8272	"	"	8540	"	"
8273	"	"	8947	"	"
8274	"	"	8948	"	"
8275	"	"	8949	"	"
8276	"	"	8950	"	"
8277	"	"	8951	"	"
8278	"	"	8952	"	"
8279	"	"	8953	"	"
8280	"	"	8954	"	"
8281	"	"	8955	"	"
8282	"	"	8956	"	"
8283	"	"	8957	"	"
8284	"	"	8958	"	"
8285	"	"	8959	"	"
8286	"	"	8960	"	"
8287	"	"	8961	"	"
8288	"	"	896	"	"
8289	"	"	8963	"	"
8491	"	"	8964	"	"
8492	"	"	8965	"	"
8493	"	"	8966	"	"
8494	"	"	8967	"	"
8495	"	"	8968	"	"
8496	"	"	8969	"	"
8497	"	"	8970	"	"
8498	"	"	8971	"	"
8499	"	"	8972	"	"
8500	"	"	8973	"	"
8501	"	"	8974	"	"

List of coupons, &c.—Continued.

No. of bond.	No. of coupon.	Amount of coupon.	No. of bond.	No. of coupon.	Amount of coupon.
8975	"	"	9353	"	"
8976	"	"	9354	"	"
8977	"	"	9355	"	"
8978	"	"	9356	"	"
8979	"	"	9357	"	"
8980	"	"	9358	"	"
8981	"	"	9359	"	"
8982	"	"	9360	"	"
8983	"	"	9361	"	"
8984	"	"	9362	"	"
8985	"	"	9363	"	"
8986	"	"	9364	"	"
8987	"	"	9365	"	"
8988	"	"	9366	"	"
8989	"	"	9367	"	"
8990	"	"	9368	"	"
8991	"	"	9369	"	"
8992	"	"	9370	"	"
8993	"	"	9371	"	"
8994	"	"	9372	"	"
8995	"	"	9373	"	"
8996	"	"	9374	"	"
8708	"	"	9375	"	"
8709	"	"	9376	"	"
8710	"	"	9377	"	"
8711	"	"	9378	"	"
8712	"	"	9379	"	"
8713	"	"	9380	"	"
8714	"	"	9381	"	"
8715	"	"	9382	"	"
8716	"	"	9383	"	"
8717	"	"	9384	"	"
8718	"	"	9385	"	"
8719	"	"	9386	"	"
8720	"	"	9387	"	"
8721	"	"	9388	"	"
8752	"	"	9389	"	"
8753	"	"	9390	"	"
8754	12	$35	9391	"	"
8755	"	"	9392	"	"
9660	"	"	9393	"	"
9661	"	"	9394	"	"
9662	"	"	9395	"	"
9663	"	"	9396	"	"
9664	"	"	8897	"	"
9665	"	"	8898	"	"
9666	"	"	8899	"	"
9667	"	"	8900	"	"
9668	"	"	8901	"	"
8591	"	"	8902	"	"
8592	"	"	8903	12	$35
8593	"	"	8904	"	"
8594	"	"	8905	"	"
8595	"	"	8906	"	"
8596	"	"	8907	"	"
8597	"	"	8908	"	"
8598	"	"	8909	"	"
8599	"	"	8910	"	"
8600	"	"	8911	"	"
8601	"	"	8912	"	"
8602	"	"	8913	"	"
8603	"	"	8914	"	"
8604	"	"	8915	"	"
8605	"	"	8016	"	"
8606	"	"	8917	"	"
8607	"	"	8918	"	"
8608	"	"	8919	"	"
8609	"	"	8920	"	"
9347	"	"	8921	"	"
9348	"	"	8922	"	"
9349	"	"	8923	"	"
9350	"	"	8924	"	"
9351	"	"	8925	"	"
9352	"	"	8926	"	"

List of coupons, &c.—Continued.

No. of bond.	No. of coupon.	Amount of coupon.
8927	"	"
8928	"	"
8929	"	"
8930	"	"
8931	"	"
8932	"	"
8933	"	"
8934	"	"
8935	"	"
8936	"	"
8937	"	"
8938	"	"
8939	"	"
8940	"	"
8941	"	"
8942	"	"
8943	"	"
8944	"	"
8945	"	"
8946	"	"
8541	"	"
8542	"	"
8543	"	"
8544	"	"
8545	"	"
8546	"	"
8547	"	"
8548	"	"
8549	"	"
8550	"	"
8551	"	"
8552	"	"
8553	"	"
8554	"	"
8555	"	"
8556	"	"
8557	"	"
8558	"	"
8559	"	"
8560	"	"
8561	"	"
8562	"	"
8563	"	"
8564	"	"
8566	"	"
8567	"	"
8568	"	"
8569	"	"
8570	"	"
8571	"	"
8572	"	"
8573	"	"
8574	"	"
8575	"	"
8576	"	"
8577	"	"
8578	"	"
8579	"	"
8580	"	"
8581	"	"
8582	"	"
8583	"	"
179 8584	12	$35
8585	"	"
8586	"	"
8587	"	"
8588	"	"
8589	"	"
8590	"	"
8250	"	"
8251	"	"
8252	"	"

No. of bond.	No. of coupon.	Amount of coupon.
8253	"	"
8254	"	"
8255	"	"
8256	"	"
8257	"	"
8258	"	"
8259	"	"
8680	"	"
8681	"	"
8682	"	"
8683	"	"
8684	"	"
8685	"	"
8686	"	"
8687	"	"
8688	"	"
8689	"	"
8690	"	"
8691	"	"
8692	"	"
8693	"	"
8694	"	"
8695	"	"
8696	"	"
8697	"	"
8698	"	"
8699	"	"
8700	"	"
8701	"	"
8702	"	"
8703	"	"
8704	"	"
9494	"	"
9495	"	"
9496	"	"
9497	"	"
9498	"	"
9499	"	"
9500	"	"
9501	"	"
9502	"	"
9503	"	"
9504	"	"
9505	"	"
9506	"	"
9507	"	"
9508	"	"
9509	"	"
9510	"	"
9511	"	"
9512	"	"
9513	"	"
9514	"	"
9515	"	"
9516	"	"
9517	"	"
9518	"	"
9519	"	"
9520	"	"
9521	"	"
9522	"	"
9523	"	"
3945	"	"
6470	"	"
6472	"	"
9819	"	"
9842	"	"
9843	"	"
9844	"	"
9835	"	"
4494	"	"
8997	"	"

List of coupons, &c.—Continued.

No. of bond.	No. of coupon.	Amount of coupon.	No. of bond.	No. of coupon.	Amount of coupon.
8998	"	"	9720	"	"
9000	"	"	9721	"	"
8999	"	"	9722	"	"
9001	"	"	9723	"	"
9002	"	"	9724	"	"
9004	"	"	9725	"	"
9005	"	"	9726	"	"
9006	"	"	9727	"	"
9007	"	"	9728	"	"
9008	"	"	9729	"	"
9009	"	"	9730	"	"
9010	"	"	9631	"	"
9012	"	"	9772	"	"
9013	"	"	9773	"	"
9014	"	"	9774	"	"
9015	"	"	9775	"	"
9016	"	"	9776	"	"
9017	"	"	9777	"	"
9018	12	$35	9878	"	"
9019	"	"	9779	"	"
9020	"	"	8046	"	"
9021	"	"	7991	"	"
9022	"	"	7992	"	"
9023	"	"	7993	"	"
9024	"	"	7994	"	"
9025	"	"	7995	"	"
9026	"	"	7996	"	"
9027	"	"	7997	"	"
9028	"	"	9669	"	"
9029	"	"	8630	"	"
9030	"	"	8631	"	"
9031	"	"	8632	"	"
9032	"	"	8633	"	"
9033	"	"	8634	12	$35
9034	"	"	8635	"	"
9035	"	"	8636	"	"
9036	"	"	8637	"	"
9037	"	"	8638	"	"
9038	"	"	8639	"	"
9039	"	"	8640	"	"
9040	"	"	8641	"	"
9041	"	"	8642	"	"
9042	"	"	8643	"	"
9043	"	"	8644	"	"
9044	"	"	8645	"	"
9045	"	"	8646	"	"
9046	"	"	8647	"	"
5168	"	"	8648	"	"
8148	"	"	8649	"	"
8149	"	"	8650	"	"
9684	"	"	8651	"	"
9685	"	"	8654	"	"
9686	"	"	8652	"	"
9687	"	"	8653	"	"
9689	"	"	5732	"	"
9688	"	"	9733	"	"
9690	"	"	9734	"	"
9691	"	"	9735	"	"
9692	"	"	9736	"	"
9693	"	"	9737	"	"
9694	"	"	9738	"	"
9695	"	"	9739	"	"
9696	"	"	9740	"	"
9697	"	"	9741	"	"
9698	"	"	9742	"	"
9699	"	"	9743	"	"
9712	"	"	9744	"	"
9713	"	"	9745	"	"
9714	"	"	9746	"	"
9715	"	"	9747	"	"
9716	"	"	9748	"	"
9717	"	"	9749	"	"
9718	"	"	9750	"	"
9719	"	"	9751	"	"

List of coupons, &c.—Continued.

No. of bond.	No. of coupon.	Amount of coupon.	No. of bond.	No of coupon.	Amount of coupon.
8655	"	"	8801	"	"
8656	"	"	8802	"	"
8657	"	"	8803	"	"
8658	"	"	8804	"	"
8659	"	"	8805	"	"
8660	"	"	8806	"	"
8661	"	"	8807	"	"
8662	"	"	8808	"	"
8663	"	"	8809	"	"
8664	"	"	8810	"	"
8665	"	"	8811	"	"
8666	"	"	8812	"	"
8667	"	"	8813	"	"
8668	"	"	8814	"	"
8669	"	"	8815	"	"
8670	"	"	8816	"	"
8671	"	"	8817	"	"
8672	"	"	8818	"	"
8673	"	"	8819	"	"
8674	"	"	8820	"	"
8675	"	"	8821	"	"
8676	"	"	8822	"	"
8677	"	"	8823	"	"
8678	"	"	8824	"	"
8679	"	"	8825	"	"
8727	"	"	8826	"	"
8728	"	"	8827	"	"
8729	"	"	8828	"	"
8730	"	"	8829	"	"
8731	"	"	8830	"	"
8732	"	"	8831	"	"
8733	"	"	8832	"	"
8734	"	"	8833	"	"
8735	"	"	8834	"	"
8736	"	"	8835	"	"
8737	"	"	8836	"	"
8738	"	"	8837	"	"
8739	"	"	8838	"	"
8740	"	"	8839	"	"
8741	"	"	8844	"	"
8742	"	"	8845	"	"
8743	"	"	8846	"	"
8744	"	"	8847	"	"
8745	"	"	8848	"	"
8746	"	"	8849	"	"
9670	"	"	8850	"	"
9671	"	"	8851	"	"
9672	"	"	8852	"	"
9673	12	$35	8853	"	"
9674	"	"	8854	"	"
9675	"	"	8855	"	"
9676	"	"	8856	"	"
9677	"	"	8857	"	"
9678	"	"	8858	"	"
9679	"	"	8859	"	"
8748	"	"	8860	"	"
8749	"	"	8861	"	"
8750	"	"	8862	"	"
8751	"	"	8863	"	"
8747	"	"	8864	"	"
5290	"	"	8865	"	"
5291	"	"	8866	"	"
5292	"	"	8867	"	"
5293	"	"	8868	"	"
5294	"	"	180 8869	12	$35
5295	"	"	8870	"	"
8705	"	"	8871	"	"
8706	"	"	8872	"	"
8707	"	"	8873	"	"
8797	"	"	8874	"	"
8798	"	"	8875	"	"
8799	"	"	8876	"	"
8800	"	"	8877	"	"

List of coupons, &c.—Continued.

No. of bond.	No. of coupon.	Amount of coupon.	No. of bond.	No. of coupon.	Amount of coupon.
8878	"	"	9102	"	"
8879	"	"	9103	"	"
8880	"	"	9104	"	"
8881	"	"	9105	"	"
8882	"	"	9106	"	"
8883	"	"	9107	"	"
8884	"	"	9108	12	$35
8885	"	"	9109	"	"
8886	"	"	9110	"	"
8887	"	"	9111	"	"
8888	"	"	9112	"	"
8889	"	"	9113	"	"
8890	"	"	9114	"	"
8891	"	"	9115	"	"
8892	"	"	9116	"	"
8893	"	"	9117	"	"
8894	"	"	9118	"	"
8895	"	"	9119	"	"
8896	"	"	9120	"	"
9047	"	"	9121	"	"
9048	"	"	9122	"	"
9049	"	"	9123	"	"
9050	"	"	9124	"	"
9051	"	"	9125	"	"
9052	"	"	9126	"	"
9053	"	"	9127	"	"
9054	"	"	9128	"	"
9055	"	"	9129	"	"
9056	"	"	9130	"	"
9057	"	"	9131	"	"
9058	"	"	9132	"	"
9059	"	"	9133	"	"
9060	"	"	9134	"	"
9061	"	"	9135	"	"
9062	"	"	9136	"	"
9063	"	"	9137	"	"
9064	"	"	9138	"	"
9065	"	"	9139	"	"
9066	"	"	9140	"	"
9067	"	"	9142	"	"
9068	"	"	9143	"	"
9069	"	"	9144	"	"
9070	"	"	9145	"	"
9071	"	"	9146	"	"
9072	"	"	9247	"	"
9073	"	"	9248	"	"
9074	"	"	9249	"	"
9075	"	"	9250	"	"
9076	"	"	9251	"	"
9077	"	"	9252	"	"
9078	"	"	9253	"	"
9079	"	"	9254	"	"
9080	"	"	9255	"	"
9081	"	"	9256	"	"
9082	"	"	9257	"	"
9083	"	"	9258	"	"
9084	"	"	9259	"	"
9085	"	"	9260	"	"
9086	"	"	9261	"	"
9087	"	"	9262	"	"
9088	"	"	9263	"	"
9089	"	"	9264	"	"
9090	"	"	9265	"	"
9091	"	"	9266	"	"
9092	"	"	9267	"	"
9093	"	"	9268	"	"
9094	"	"	9269	"	"
9095	"	"	9270	"	"
9096	"	"	9271	"	"
9097	"	"	9272	"	"
9098	"	"	9273	"	"
9099	"	"	9274	"	"
9100	"	"	9275	"	"
9101	"	"	9276	"	"

List of coupons, &c.—Continued.

No. of bond.	No. of coupon.	Amount of coupon.
9277	"	"
9278	"	"
9279	"	"
9280	"	"
9281	"	"
9283	"	"
9283	"	"
9284	"	"
6285	"	"
9286	"	"
9287	"	"
9288	"	"
9289	"	"
9290	"	"
9291	"	"
9292	"	"
9293	"	"
9294	"	"
9296	"	"
9296	"	"
9297	"	"
9298	"	"
9299	12	$35
9300	"	"
9301	"	"
9302	"	"
9303	"	"
9304	"	"
9305	"	"
9306	"	"
9307	"	"
9308	"	"
9309	"	"
9310	"	"
9311	"	"
9312	"	"
9313	"	"
9314	"	"
9315	"	"
9316	"	"
9317	"	"
9318	"	"
9319	"	"
9320	"	"
9321	"	"
9322	"	"
9323	"	"
9324	"	"
9325	"	"
9326	"	"
9327	"	"
9328	"	"
9329	"	"
9330	"	"
9331	"	"
9332	"	"
9333	"	"
9334	"	"
9335	"	"
9336	"	"
9337	"	"
9338	"	"
9339	"	"
9340	"	"
9341	"	"
9342	"	"
9343	"	"
9344	"	"
9345	"	"
9346	"	"
9397	"	"
9398	"	"
9399	"	"

No. of bond.	No. of coupon.	Amount of coupon.
9400	"	"
9401	"	"
9402	"	"
9405	"	"
9406	"	"
9407	"	"
9408	"	"
9409	"	"
9410	"	"
9411	"	"
9412	"	"
9413	"	"
9414	"	"
9415	"	"
9416	"	"
9417	"	"
9418	"	"
9419	"	"
9420	"	"
9421	"	"
9423	"	"
9422	"	"
9424	"	"
9425	"	"
9426	"	"
9427	"	"
9428	"	"
9429	"	"
9430	"	"
9431	"	"
9432	"	"
9433	"	"
9434	"	"
9435	"	"
9436	"	"
9437	"	"
9438	"	"
9439	12	$35
9440	"	"
9441	"	"
9442	"	"
9443	"	"
9444	"	"
9445	"	"
9446	"	"
9460	"	"
9461	"	"
9462	"	"
9463	"	"
9464	"	"
9465	"	"
9466	"	"
9467	"	"
9468	"	"
9469	"	"
9470	"	"
9471	"	"
9472	"	"
9473	"	"
9474	"	"
9475	"	"
9476	"	"
9478	"	"
9479	"	"
9574	"	"
9575	"	"
9576	"	"
9577	"	"
9578	"	"
9579	"	"
9580	"	"
9581	"	"
9582	"	"

List of coupons, &c.—Continued.

No. of bond.	No. of coupon.	Amount of coupon.	No. of bond.	No. of coupon.	Amount of coupon.
9583	"	"	1195	"	"
9584	"	"	1196	"	"
9585	"	"	1197	"	"
9586	"	"	1198	"	"
9587	"	"	1199	"	"
9588	"	"	1200	"	"
9589	"	"	1201	"	"
9590	"	"	1202	"	"
9591	"	"	1203	"	"
9592	"	"	1204	"	"
9593	"	"	1205	"	"
9594	"	"	1206	"	"
9595	"	"	1207	"	"
9596	"	"	1208	"	"
9597	"	"	1209	"	"
9598	"	"	1210	"	"
9599	"	"	1211	"	"
9600	"	"	1212	"	"
9601	"	"	1213	"	"
9602	"	"	1214	"	"
9603	"	"	1215	"	"
9480	"	"	1216	"	"
9481	"	"	1217	"	"
9482	"	"	1218	"	"
9483	"	"	1219	"	"
9484	"	"	1220	"	"
9485	"	"	1221	"	"
9486	"	"	1222	"	"
9487	"	"	1223	"	"
9488	"	"	1224	"	"
9489	"	"	1225	"	"
9700	"	"	1226	"	"
9701	"	"	1227	"	"
9702	"	"	1228	"	"
9703	"	"	1229	"	"
9704	"	"	1230	"	"
9705	"	"	1231	"	"
9706	"	"	1232	"	"
9707	"	"	1233	"	"
9708	"	"	1234	"	"
9709	"	"	1235	"	"
9710	"	"	1236	"	"
9711	"	"	1237	"	"
9752	"	"	1238	"	"
9753	"	"	1239	"	"
9754	"	"	1240	"	"
9755	"	"	1241	"	"
9756	"	"	1242	"	"
9757	"	"	1243	"	"
9758	"	"	1244	"	"
9759	"	"	1420	"	"
9760	"	"	1421	"	"
9761	"	"	1422	"	"
181 9762	12	$35	1423	"	"
9763	"	"	1424	"	"
9764	"	"	1425	"	"
9765	"	"	1392	"	"
9766	"	"	1393	"	"
9767	"	"	1394	"	"
9768	"	"	1395	"	"
9769	"	"	1396	"	"
9770	"	"	1397	"	"
9771	"	"	1398	"	"
9780	"	"	1399	"	"
9781	"	"	1387	"	"
9782	"	"	1388	"	"
9783	"	"	1389	"	"
9784	"	"	1383	"	"
9785	"	"	1374	"	"
9786	"	"	1375	"	"
9787	"	$17 50	913	"	"

List of coupons, &c.—Continued.

No. of bond.	No. of coupon.	Amount of coupon.	No. of bond.	No. of coupon.	Amount of coupon.
914	12	$17 50	2414	"	"
1472	"	"	2415	"	"
1473	"	"	2416	"	"
1474	"	"	2883	"	"
1475	"	"	2921	"	"
1745	"	"	2922	"	"
1746	"	"	3494	"	"
1245	"	"	529	"	"
1246	"	"	958	"	"
1247	"	"	1629	"	"
1248	"	"	1633	"	"
1249	"	"	1634	"	"
1250	"	"	1635	"	"
1251	"	"	2555	"	"
1252	"	"	2556	"	"
1253	"	"	2557	"	"
1254	"	"	3400	"	"
1255	"	"	3401	"	"
1256	"	"	3402	"	"
1257	"	"	3407	"	"
1258	"	"	3408	"	"
1259	"	"	3689	12	$3 60
1260	"	"	3694	"	"
1261	"	"	3705	"	"
1262	"	"	3720	"	"
1263	"	"	3721	"	"
1264	"	"	3722	"	"
1265	"	"	3723	"	"
1266	"	"	3724	"	"
1267	"	"	3725	"	"
1365	"	"	3738	"	"
1366	"	"	3739	"	"
1367	"	"	3740	"	"
1368	"	"	3741	"	"
1369	"	"	3742	"	"
1370	"	"	3743	"	"
1371	"	"	3772	"	"
1373	"	"	3773	"	"
1376	"	"	3774	"	"
1377	"	"	3775	"	"
1378	"	"	3936	"	"
1379	"	"	3937	"	"
1380	"	"	3938	"	"
1381	"	"	4084	"	"
1382	"	"	3706	"	"
1384	"	"	3707	"	"
1385	"	"	3708	"	"
1386	"	"	3918	"	"
1390	"	"	3919	"	"
1391	"	"	3920	"	"
1466	"	"	3921	"	"
236	"	"	3955	"	"
311	"	"	3956	"	"
1372	"	$3 50	3957	"	"
3709	"	"	3958	"	"
3710	"	"	1498	"	"
3711	"	"	185	"	$17 50
12	"	"	420	"	"
57	"	"	424	"	"
58	"	"	950	"	"
95	"	"	952	"	"
916	"	"	953	"	"
1950	"	"	956	"	"
1951	"	"	955	"	"
1952	"	"	999	"	"
1998	"	"	1003	"	"
1999	"	"	1450	"	"
2067	"	"			

Recapitulation.

1095 coupons of $35 each.
136 do. " " 17.50.
70 do. " " 3.50.

The foregoing list is made up of coupons actually produced and offered in evidence upon the trial of suit 9052, U. S. circuit court, district of Louisiana.

New Orleans, Jan'y 17, '81.

(Signed) OSCAR J. FORSTALL.

Correct.

(Signed) LACEY & BUTLER,
Att'ys.

182 *Document marked "4" referred to and made part of the foregoing finding of facts.*

1000.] UNITED STATES OF AMERICA. [1000.

No. 101.] [No. 101.

Consolidated bond of the State of Louisiana.

The State of Louisiana, by these presents, hereby acknowledges itself indebted to the bearer in the sum of one thousand dollars, which sum it promises to pay, in lawful money of the United States, at the office of the State treasurer in the city of New Orleans, State of Louisiana, on demand, after the first day of January, A. D. one thousand nine hundred and fourteen, with interest, at the rate of seven per cent. per annum, payable semi-annually, in lawful money of the United States, at the office of the State treasurer, city of New Orleans, State of Louisiana; or at the office of the fiscal agent of the State of Louisiana in the city of New York, State of New York,
183 on the first day of July and January of each year upon the surrender of the coupons hereto annexed, as they shall come due.

This bond is issued under authority of, and in conformity with, an act of the general assembly of the State of Louisiana, approved January 24th, 1874.

In testimony whereof, the governor, auditor, and secretary of the State of Louisiana under the seal of the State, have signed these presents bearing date this first day of January, A. D. one thousand eight hundred and seventy-four, in conformity with the provisions of the aforesaid act.

WM. P. KELLOGG,
Gov. of the State of La.

CHAS. CLINTON,
Auditor of Public Acc'ts.
P. G. DESLONDE,
Secretary of State.

$35.] [$35.

Consolidated bond. Act of January 24, 1874.

The State of Louisiana will pay the bearer on the first day of January, 1880, thirty-five dollars, in lawful money of the United States, in New Orleans or New York, at the option of the holder, being six month's interest on consolidated bond No. 7958,
184 coupon No. 12.

CHAS. CLINTON, *Auditor.* ANE. DUBUCLET, *Treasurer.*

(Endorsed:) No. 101. United States of America, State of Louisiana. Consols. $1,000. Under authority of an act of the general assembly, approved January 24th, 1874. Principal and interest payable in lawful money of the United States. Principal due first day of January, A. D. 1914, interest seven per cent. payable on the first day of July and January of each year, in New Orleans or New York, at the option of the holder.

The payment of the principal and interest of this bond is provided for by the levy of an annual tax fixed and guaranteed by the constitution of the State and not repealable by legislative enactment.

State debt limited to $15,000,000 and taxes for all purposes, except for schools, limited to 12½ mills by the constitution of the State.

185 Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE:

I certify the foregoing to be a true copy of the bond No. 101 and coupon No. 12, filed in the cause entitled "State, ex rel. Jno. Elliott et als., vs. A. Jumel, auditor, et als," No. 9052 of the docket of this court.

Witness my hand and seal of said court at the city of New Orleans, this 11th day of January, 1881.

T. V. COUPLAND,
Dy Clerk.

186 *Document marked "G."—Referred to and made part of the foregoing finding of facts.—Statement showing the assessment of various years and the rate of interest at 5½ mills.*

Assessment for the year 1874	203,352,824 17	1,118,440 53
" " " " 1875	191,993,419 86	1,055,963 80
" " " " 1876	175,460,289 00	965,031 00
" " " " 1877	177,259,732 67	974,928 52
" " " " 1878	177,000,000 90	973,500 00
	$925,066,265 70	$5,087,863 85

187 *Document marked "G?."—Referred to and made part of the foregoing finding of facts.—Statement showing the amount paid on interest coupons out of the interest tax fund of 1874, 1875, 1876, 1877, 1878, and 1879, and the balance due to bondholders on same up to the morning of January 1st, 1881.*

	Due.	Paid.	Balance.
Coupons of 1874	828,758 00	770,756 96	58,001 04
1875	828,758 00	739,249 24	89,508 76
1876	828,758 00	662,130 00	166,628 00
1877	828,758 00	722,667 33	106,090 67
1878	828,758 00	703,993 54	124,764 46
½ year's interest due July 1, 1879	414,379 00	394,392 10	19,986 90
	4,558,169 00	3,993,189 17	564,979 83

Amount of bonds issued under act No. 3, 1874:

No. 1 @ 1,000 at $1,000	10,000,000 00
1 " 2,798 " $500,00	1,399,000 00
1 " 4,404 " $100.00	440,400 00
Total issued	$11,839,400 00

Under the provisions of article 3, ordinance of the constitution of 1879, adopted as per official promulgation January 1, '80, there has been received into the State treasury since the adoption of said constitution the sum of two hundred and thirty-eight thousand eight hundred and thirteen $\frac{29}{100}$ dollars	238,813 29
Amount on hand January 1, '80, paid into the treasury, 3% interest applicable to the payment of interest coupons due January 1, '80, thirty-five thousand one hundred & eighteen $\frac{03}{100}$ doll's	35,118 03
Total amount on hand and in controversy, two hundred and seventy-three thousand nine hundred & thirty-one $\frac{32}{100}$ doll's	$273,931 32

[SEAL.] (Signed) E. A. BURKE,
State Treasurer of Louisiana.

188 The court finds the following to be the conclusions of law arising from the facts of this case as above found:

1st. That the proceeding instituted in the third district court of the parish of Orleans, to obtain a writ of mandamus, was a "suit" within the meaning of the act of Congress of the year 1875, and was, therefore, capable to be removed to the circuit court of the United States, and was lawfully and properly removed to this court; that the restriction of the statute which, by well settled adjudication, limits the power or authority of the circuit courts to issue writs of mandamus to those cases only in which a jurisdiction has been previously acquired, can have no application to a removed case when the whole relief sought consisted in the writ; that in such case the statute, vesting in the circuit court the entire judicial power granted by the constitution, necessarily supplied the authority to issue all requisite and usual process both mesne and final, and that this court has the jurisdictional authority to grant

189 the writ of mandamus in this cause.

II. That it appearing that these respondents are constitutional officers of the State, and have no relation to the funds collected, or to be collected, excepting as such officers; that they are clothed with no authority, and charged with no duty to pay over or collect said funds to or in behalf the relator, but, on the contrary, by the organic law of the State under which their offices were created and exist, the provisions of which constitute their sole mandate, are prohibited from so doing, the State is the party which, by its action in its original capacity through the people, has rendered the execution of its contract with relator impossible through the instrumentality of its officers or functionaries; that the question here presented is political rather than judicial, and could not be adjudicated without calling a State to the bar of the court and subverting its entire financial basis, no matter how unjustly adopted and ordained.

III. That the prayer of the relator should be rejected, and the writ of mandamus refused.

190 Let there be judgment in favor of the respondents.

(Signed) EDWARD C. BILLINGS, *Judge.*

Judgment.—Extract from judgment book.

Circuit court of the United States, fifth circuit and eastern district of Louisiana. November term, 1880.

NEW ORLEANS, *Wednesday, March* 23, 1881.

Court met pursuant to adjournment.
Present, Hon. E. C. Billings, district judge.

STATE OF LOUISIANA, EX REL. JOHN ELliott et als., *vs.* ALLEN JUMEL, AUDITOR, ET AL. } No. 9052.

The parties in this cause having heretofore waived the intervention of a jury, and submitted the cause to the court upon the issues of fact as well as of law; the court having considered the evidence and arguments of counsel, and being fully advised in the premises, finds, as matters of fact and conclusions of law, what is contained
191 in the paper marked "X" this day filed of record, and to form a part of the same for all purposes, and it being found that the relators are not entitled to the relief prayed for.

It is ordered, adjudged, and decreed, that the petition of the relators for a mandamus be dismissed at their costs, to be taxed.

Judgment rendered March 23, 1881.
Judgment signed March 28, 1881.
(Signed) EDWARD C. BILLINGS, *Judge.*

Motion & order for writ of error.—Entered & filed April 1st, 1881.

U. S. circuit court.

STATE OF LOUISIANA, EX REL. JOHN ELliott et als., *vs.* ALLEN JUMEL, AUDITOR, ET AL. } No. 9052.

On motion of Lacey & Butler, of counsel for relators, and upon suggesting to the court that, in their opinion, there is manifest error in the judgment of this court, rendered on the 23d day of March, A. D. 1881, and signed on the 28th day of the same month, and that the said
192 relators, feeling aggrieved by such judgment, are desirous to take this cause before the Supreme Court of the United States,

It is ordered that a writ of error be allowed herein, returnable before the said court, at the city of Washington, on the second Monday of October, A. D. 1881, upon relators giving bond and security, conditioned according to law, in the sum of five hundred dollars.

Bond for writ of error.—Filed April 20th, 1881.

Know all men by these presents that we, John Elliott, Nicholas Gwynn, and H. H. Walker, and each and every one of us, jointly and severally, as principals, and Isaac Edmond Glenny, as surety, are held and firmly bound unto Allen Jumel, auditor of the State of Louisiana; Ed. A. Burke, treasurer of the said State, and to the board of liquidation, constituted by act No. 3 of the sessions of the general assembly of the State of Louisiana
193 for the year 1874; composed of Louis A. Wiltz, governor of the said State; Sam. McEnery, lieut.-governor of the State of Louisiana;

Allen Jumel, auditor of the State of Louisiana; Ed. A. Burke, treasurer of the State of Louisiana; Will A. Strong, secretary of state of the State of Louisiana; Robt. N. Ogden, speaker of the house of representatives of the State of Louisiana, and the State National Bank, fiscal agent of the State of Louisiana, and to each and every one of the members of the board of liquidation aforesaid, and to each and every one of the several obligees hereinabove named, jointly and severally, in the just and full sum of five hundred dollars, to be paid to the said Allen Jumel, auditor; E. A. Burke, treasurer, and to the aforesaid board of liquidation, and each and every one of the members thereof, and to the several obligees aforesaid, jointly and severally, and to their and each of their, certain attorneys, executors, administrators, or assigns; to which payment well and truly to be made, we bind ourselves, our heirs,
194 executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this 18th day of April, in the year of our Lord one thousand eight hundred and eighty-one.

Whereas lately at a circuit court of the United States, fifth judicial circuit, holding sessions in and for the eastern district of Louisiana, in a suit depending in said circuit court, wherein John Elliott et als. are relators and plaintiffs and Allen Jumel, auditor, & others are defendants, judgment was rendered against the said plaintiffs and relators, and the said plaintiffs and the several relators aforesaid having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court to reverse the judgment in the aforesaid suit, and a citation directed to the said Allen Jumel, auditor, and the several other defendants and obligees aforesaid, citing and admonishing them, and each, of them to be and appear at the Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the
195 said plaintiffs and the several relators aforesaid shall jointly and severally prosecute their writ to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) JOHN ELLIOTT, [L. S.]
Per LACEY *Att'y.*
NICHOLAS GWYNN, [L. S.]
Per LACEY, *Att'y.*
H. H. WALKER, [L. S.]
Per LACEY, *Att'y.*
J. EDMUND GLENNY. [L. S.]

UNITED STATES OF AMERICA,
Eastern District of Louisiana, ss:

Personally appeared Isaac E. Glenny, who, being duly sworn, deposes and says that he is the surety on the within bond; that he resides No. 220 Coliseum street, New Orleans, Louisiana, and is wor h the full sum of five hundred dollars, over and above all his debts and liabilities and property exempt from execution.

(Signed) J. EDMUND GLENNY.

Subscribed and sworn before me this 18th day of April, 1881.

[SEAL.] (Signed) CHAS. S. RICE,
Comm'r U. S. Circuit Court, Eastern Dist. of Louisiana.

Bond approved as sufficient surety, and writ of error allowed.

(Signed) EDWARD C. BILLINGS, *Judge.*

196 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and eastern district of Louisiana.

CLERK'S OFFICE:

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 195 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had on the trial of the case of State of La., ex rel. Jno. Elliott et als., vs. Allen Jumel, auditor, et al., No. 9052 of the docket of the said court.

Witness my hand and the seal of said court at the city of New Orleans, this 23d day of April, A. D. 1881.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

I, Edward C. Billings, United States judge for the eastern district of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was, at the time of signing said certificate, and is now the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 23d day of April, A. D. 1881.

EDWARD C. BILLINGS.

197 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the eastern district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between the State of Louisiana, ex rel. John Elliot, Nicholas Gwynn, and Henry H. Walker, petitioners and relators, and Allen Jumel, auditor of the State of Louisiana; Ed. A. Burke, treasurer of the State of Louisiana; the Board of Liquidation of the State of Louisiana, created by act No. 3, of the sessions of the general assembly of said State for the year 1874, the said board being now composed of Louis A. Wiltz, governor of the State of Louisiana; Sam'l McEnery, lieut.-governor of the State of Louisiana; Allen Jumel, auditor of the State of Louisiana; Ed. A. Burke, treasurer of the State of Louisiana; Will A. Strong, secretary of state of the State of Louisiana; Robert N. Ogden, speaker of the house of representatives of the State of Louisiana, and the State National Bank of New Orleans, fiscal agent of the State of Louisiana, respondents, a manifest error hath happened, to the great damage of the said John Elliott, Nicholas Gwynn, and Henry H. Walker, petitioners and relators, as by their complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same

at Washington, on the second Monday of October next, in the said Supreme Court, to be then and there held; that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 1st day of April, in the year of our Lord one thousand eight hundred and eighty-one.

[SEAL.] F. A. WOOLFLEY,
Clerk of the United States Circuit Court
for the Eastern District of Louisiana.

(Indorsed:) United States circuit court, eastern district of Louisiana. No. 9052. State of Louisiana, ex rel. John Elliott et. al., pl'ffs in error, versus Allen Jumel, auditor, et als., defendants in error. Writ of error. Writs of error filed April 1st, 1881. T. V. Coupland, d'y clerk.

198 THE UNITED STATES OF AMERICA:

Circuit court of the United States, eastern district of Louisiana.

The President of the United States to Allen Jumel, auditor of the State of Louisiana; Ed. A. Burke, treasurer of the State of Louisiana; The Board of Liquidation of the State of Louisiana, created by act No. 3 of the sessions of the general assembly of said State for the year 1874; Louis A. Wiltz, governor of the State of Louisiana, as one of said board of liquidation; Sam'l McEnery, lieut.-governor of the State of Louisiana, as one of said board of liquidation; Allen Jumel, auditor of the State of Louisiana, as one of said board of liquidation; Ed. A. Burke, treasurer of the State of Louisiana, as one of said board of liquidation; Will A. Strong, secretary of state of the State of Louisiana, as one of said board of liquidation; Robert N. Ogden, speaker of the house of representatives of the State of Louisiana, as one of said board of liquidation; The State National Bank of New Orleans, fiscal agent of the State of Louisiana, as one of said board of liquidation, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein John Elliott, Nicholas Gwynn, and Henry H. Walker are plaintiffs in error, and you and each of you are defendants in error, to show cause, if any there be, why the judgment rendered against the said John Elliott, Nicholas Gwynn, and Henry H. Walker, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 20th day of April, in the year of our Lord one thousand eight hundred and eighty-one.

EDWARD C. BILLINGS, *Judge.*

199 (Indorsed:) United States circuit court, eastern district of Louisiana. No. 9052. State of Louisiana, ex rel. John Elliott et als., plaintiffs in error, vs. Allen Jumel, auditor of the State of Louisiana, et als., defendants in error. Citations to the defendants in error. Marshal'sreturn. See return inside.

Received Apr. 22, 1881, by the U. S. marshal, and I served true copies of the within writ of error on the defendants in error herein named, in the following manner and date, to wit:

Board of liquidation, State of Louisiana, by handing the same to Louis A. Wiltz, personally, April 22d, 1881.

Louis A. Wiltz, governor of State of Louisiana, personally, April 22d, 1881; State National Bank, fiscal agent of the State of Louisiana, as one of said board of liquidation, personally, on Samuel H. Kennedy, the president of said bank, April 23d, 1881; Robert N. Ogden, speaker of the house of representatives of State of Louisiana, and member of said board, personally, April 30th, 1881; Samu'l McEnery, l't governor of State of Louisiana, and member of said board, personally, on J. C. Egan, att'y, gen'l of said State, and att'y of record of said McEnery, who is absent from said State at time of service, May 4th, 1881; E. A. Burk, treasurer of State of Louisiana, and member of said board of liquidation, personally, April 23d, 1881; E. A. Burk, treasurer of State of Louisiana, personally, April 23d, 1881; Allen Jumel, auditor of State of Louisiana, and member of said board of liquidation, personally, April 23d, 1881; Allen Jumel, auditor of State of Louisiana, personally, April 23d, 1881; Will A. Strong, a member of said board of liquidation and secretary of state of the State of Louisiana, by handing the same to J. C. Egan, in person, the att'y-general of the State of Louisiana, and the att'y of record for the said Will A. Strong, who is absent from the State at the time of said service, May 7th, 1881. All of the aforesaid def'd'ts were served in the city of New Orleans, eastern district of Louisiana.

E. S. CURRY,
D'y U. S. Marshal in & for the Eastern D's't of Louisiana.

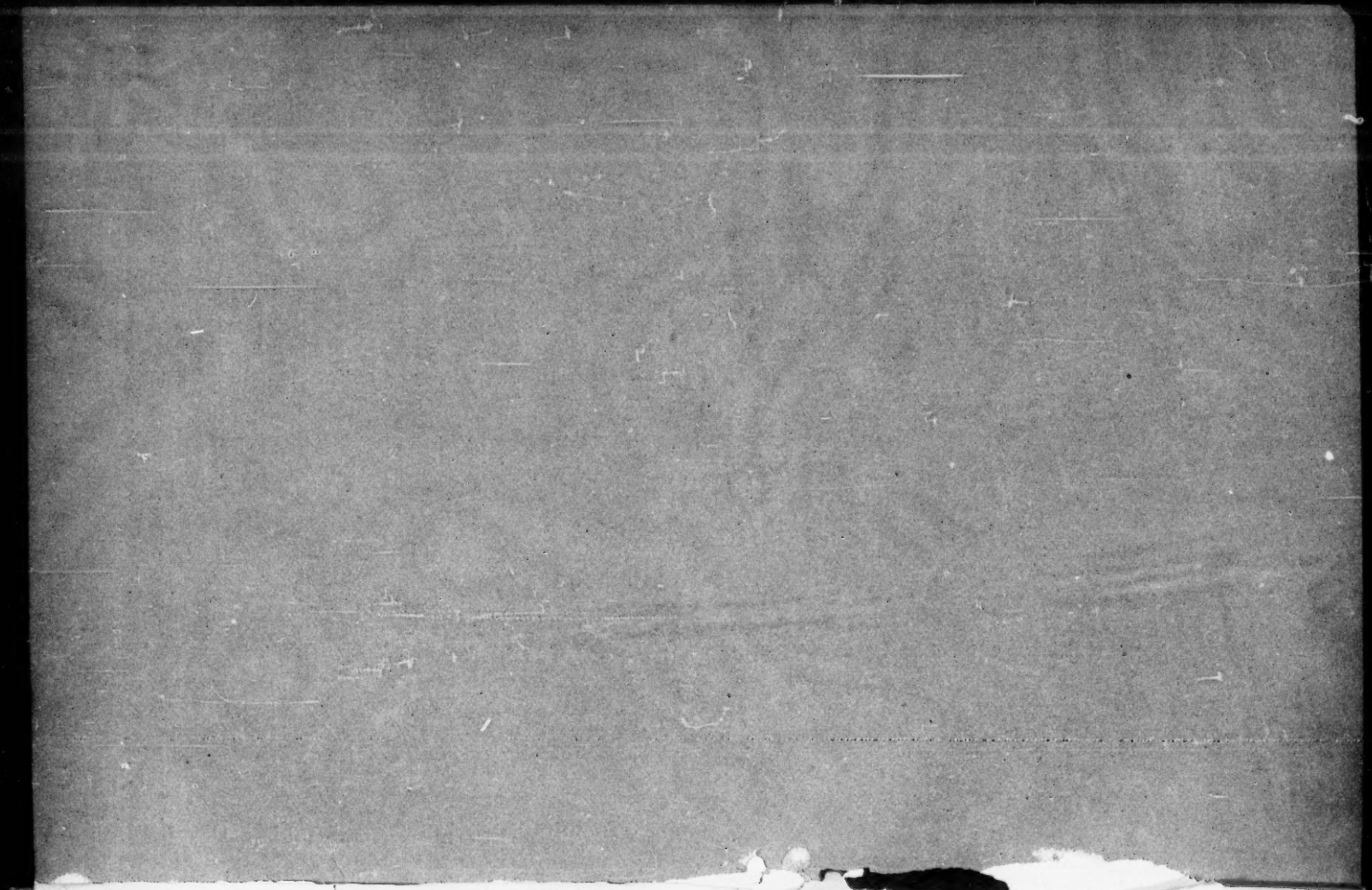
Personally appeared before me E. S. Curry, a deputy U. S. marshal, in and for the eastern district of Louisiana, and makes oath that he served true copies of the within writ of error on the defendants in error herein named as set forth in his official return hereon.

E. S. CURRY,
D'y U. S. Marshal in & for the Eastern District of Louis'a.

Subscribed and sworn before me May 7th, 1881.

T. V. COUPLAND,
Commissioner United States Circuit Court,
Eastern District of Louisiana.

(Indorsement on cover:) No. 845. The State of Louisiana ex rel. John Elliott, Nicholas Gwynn, and Henry H. Walker, plaintiffs in error, vs. Allen Jumel, auditor of the State of Louisiana, E. A. Burke, treasurer, and the Board of Liquidation of the State of Louisiana. E. Louisiana C. C. U. S. Filed 20th May, 1881.



17-711

SUPREME COURT OF THE UNITED STATES.

THE STATE OF LOUISIANA *ex rel.* JOHN ELLIOTT *et al.*,
Plaintiffs in Error,
against
ALLEN JUMEL, AUDITOR OF THE STATE OF LOUISIANA *et al.*,
Defendants in Error.

No. 845.
Mandamus.

BRIEF FOR PLAINTIFFS IN ERROR.

WHEELER H. PECKHAM,
Of Counsel for Plaintiffs in Error.

BURGOYNE, Law Case Printer (Law Telephone 587), 29 Rose Street, N. Y.

Supreme Court of the United States.

THE STATE OF LOUISIANA EX REL.,
JOHN ELLIOTT ET AL.,
Plaintiffs in Error,

AGAINST

ALLEN JUMEL, Auditor of the State of Louisiana ET AL.,
Defendants in Error.

No. 845.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

STATEMENT.

In 1874 the State of Louisiana was indebted to certain creditors and claimed that a portion of the debt was fraudulent.

As a compromise the State enacted a law known as Act No. 3 of 1874, by the terms of which the State offered its creditors its bonds for sixty per cent. of its nominal debts in accord and satisfaction thereof.

This Act is printed in full in the record (p. 42, *et seq*).

The bonds thereby offered were payable in forty years from January 1st, 1874, with interest semi-annually, at the rate of seven per cent per annum.

Sec. 7 of said act levied a tax of 5½ mills annually thereafter, for the purpose of paying the principal and interest of said bonds, and appropriated its proceeds for that purpose, and for no other, and made it a felony for any person to divert said fund from said purpose.

Sec. 7 also provided, that in case in any one year the proceeds of the tax should exceed the amount of interest due, the excess should be appropriated to the purchase of bonds.

Sec. 7 also provided that the levy and appropriation should be a continual annual levy and appropriation until the said bonds, principal and interest, should be paid or redeemed.

Sec. 7 also provided that such levy and appropriation should make it the duty of the auditor and treasurer to collect said tax annually, and to pay the interest on said bonds.

Sec. 11 of said act declared that each provision of said act was and should be a contract between the State of Louisiana and the holder of any of said bonds.

Thereafter, and in the year 1874, the State of Lousiana adopted a constitutional amendment declaring the issue of bonds authorized by said Act No. 3, to be a valid contract between the State and every holder of said bonds, which the State should by no means, and in no wise impair.

It forbid any Court to enjoin the levy or collection of the tax or the payment of the bonds.

That the tax should be assessed and collected each year until the bonds were paid, that the proceeds should be paid by the Treasurer of the State to the holders of the bonds. That no further legislation or appropriation should be requisite for such assessment, collection and payment. (See Record p. 38).

Pursuant to this law and constitution the State of Louisiana issued certain bonds of a large number of which the relators became the owners for a valuable consideration. (See Record p. 39).

The form of the bonds is found on page 65 of the record. That of the coupon on page 39. The endorsement of the bond is found on p. 39.

In the year 1879 a certain amount of said tax applicable to the payment of the coupons falling due January 1st, 1880, to wit: same $300,000 was col-

lected, and is now in the hands of the defendant Burke, State Treasurer. (Record p. 41, fol. 118).

In the year 1879 the State of Louisiana, adopted a new constitution, to go into effect January 1st 1880.

By certain provisions therein, called the debt ordinance, the rate of interest on the aforesaid bonds was greatly reduced. It also contained this provision.

"The coupons of said consolidated bonds falling due the first day of January, 1880, be and the same is hereby remitted, and any interest tax collected to meet said coupons are hereby transferred to defray the expenses of the State Government." (Record p. 7 & p. 40).

By Act No. 77 of the laws of 1880, the tax for payment of interest on said bonds is limited to three mills on the dollar, and it is provided that no more than $240,000 (two per cent. on the issue) shall be appropriated for such interest. (Record, p. 41) The tax levied by Act No. 3 was 5½ mills.

By section 1 of Act No. 3, the defendants were made a board of liquidation to carry out the provisions of the Act. (Record, p. 42.)

They still continue to act as such. (Record, p. 40.)

January 26, 1880, relators filed their petition for mandamus in the State District Court in New Orleans, against the respondents holding various State offices and constituting the board of liquidation, and one, the defendant Burke, being Treasurer of the State of Louisiana, setting forth the above facts and claiming the invalidity of the provisions as to debt in the Louisiana Constitution of 1879, as conflicting with the Constitution of the United States, and praying that the defendants be required to appropriate the money on hand, some $300,000, to the payment of the interest on the bonds held, issued under said Act of 1874, and that they be required to collect the tax as required by said Act No. 3, and apply the proceeds to pay the interest and redeem the principal of said bonds. (Record, pp. 1) to 16.

An alternative writ issued (p. 17) February 9. Defendants filed their answer.

They said that relators had never produced any of the matured coupons, nor produced evidence that they were the owners thereof.

They averred that by the Constitution of 1879 they were forbidden to pay said coupons.

February 9, 1880. Relators traversed the answer (pp. 19, 20).

February 14, 1880. Relators filed a supplemental traverse.

February 19. Relators filed an amended petition amending the prayer by specifically stating the act required or demanded from each defendant (pp. 22, 23).

February 19. Relators also filed an amended traverse—averring that presentment of coupons was useless, as defendants had openly and notoriously declared their purpose not to pay the same (p. 24).

March 5th. A supplemental petition was filed by relators averring presentment and protest of coupons and refusal by auditor and treasurer to pay same (p. 26).

Relators then removed the cause to the United States Circuit Court (pp. 26 to 30).

Citations were issued out of said Circuit Court to the several defendants (pp. 31 to 33.)

May 17, 1880. Defendants filed their peremptory exception (p. 33).

The exception challenged the jurisdiction of the or any Court over the controversy on the ground that the suit was one virtually against the State, and that the questions were political and not judicial.

The said exception was cumulated with and made a part of respondent's return and on November 13 relators filed a traverse to such supplemental return (p. 34).

December 9th. Defendants filed a further peremptory exception averring with amplification the want of jurisdiction (p. 35 & 36)

January 11, 1881, the cause was heard on pleading and proofs.

March 23d, 1881, the Court filed its findings of fact and conclusions of law (p. 37 to 67) and judgment dismissing the petition was rendered on same day (p. 68).

The Court found the facts as hereinbefore and as in the amended petition stated.

The Court concluded as matter of law that the questions presented were political and not judicial, and that the Court had no power to issue the writ asked for (p. 67.)

Assignment of Error.

1st. The Court below erred in holding that it had no jurisdiction to grant the relief asked.

2d. The Court below erred in holding that the questions raised by the record were political and not judicial.

3d. The Court erred in dismissing the petition of the relators for the writ of mandamus.

ARGUMENT.

First. The principle is familiar that where a public officer is charged with a duty and a citizen is interested that the officer should discharge that duty, the Courts at the instance of the citizen will compel the officer to discharge the duty, and will enjoin any act inconsistent therewith.

That that principle applies to this case would be doubted by no one had the Louisiana Constitution of 1879 not been adopted.

Without that Constitution there can be no doubt but that the judgment of the Supreme Court of the State rendered in the late case of Hart vs. Burke would have been the other way.

With it the Court says (and Judge Billings the same) the questions become political.

We submit that this view ignores the fact that

this new constitution is void as in conflict with the Constitution of the United States.

An unconstitutional law (or constitution) is as if it had never been passed.

If the courts say that notwithstanding that the Constitution of '79 is void, yet its invalidity is a political question which the courts cannot entertain—then they do by that very course give it a recognition, and uphold its validity just as much as if they affirmatively adjudged it valid.

The view urged ignores the fact that the Constitution of the United States is the *law* of Louisiana;

That it is the *State* law—adopted by the *State* when it became a member of the Union. It ignores the view which has been fundamental in this Court from its earliest decisions, that the constitutionality of a law is a judicial question, and to be finally decided by the judicial department of the Government.

The earliest aspect of the constitutional question was whether unconstitutional acts of the Legislature or Executive could or should be controlled by the courts. From the first it was held that the ultimate decisions of such questions rested with the courts, and that doctrine has in no case been departed from to this day.

We submit that the sole question that can be raised by the defendant in this case is whether, if the State of Louisiana had not adopted the Constitution of 1879, and the State officers had in such case refused to perform the ministerial duties imposed upon them by Act No. 3 of the laws of 1874 and the constitutional amendments following, the courts at the instance of an interested party would compel the officers to perform such duty.

It is begging the whole question to claim that the so-called act of the State in adopting the constitution of 1879 raised a political question. If the so-called Constitution of 1879 conflicted with the Constitution of the United States, it necessarily

follows that the State of Louisiana never did adopt such Constitution of 1879; the State Convention had no power to pass it; the Legislature or Convention had no power to submit it to the people; the people had no power to adopt it. All this for the very simple and clear reason that the *people of the State of Louisiana*, or the *State of Louisiana*, or by whatever name the political entity may be called, by entering the Union, adopted and made part of its organic law the constitution of the United States, and thereafter there was no power in people or convention or Legislature of the State of Louisiana to adopt any law constitutional or legislative, conflicting with such Constitution of the United States.

To the suggestion, therefore, that the State by the adoption of the Constitution of 1879, has instructed its officers not to collect this tax, and not to pay over the tax that is collected to the holders of bonds and coupons, we answer that the State has not given any such instructions, but the document which the defendants call such instruction, and upon which they rely as constituting such instructions, is a fraud and a sham, and is wholly void, as being in conflict with the superior and controlling law, which not only the people of the State of Louisiana, but the people of the whole Union have concurred in declaring shall be not only the law of the United States, but the law of the State of Louisiana, and the law which not only the Courts of the United States, but the Courts of the State of Louisiana are bound to enforce and carry out.

It seems to be suggested by one of the Judges in the Court below that there is something peculiarly sacred in the financial plan and policy of the State, and also that there is something peculiarly sacred in the affirmative action of State officers, and that while Courts, particularly United States Courts, may interfere negatively to restrain contemplated illegal action by State officers, and may interfere to restrain acts affecting other departments than the financial department of the State Government, yet,

that, in the two instances named, the Courts are powerless; or, to use an old phrase, "the arms of equity are short."

There seems to be a degree of contrast between the case of Macauley agst. Kellogg (2 Woods, 13) and these cases as decided in the Court below, upon the one side, and the case of McComb agst. The Board of Liquidation (2 Woods, 48), and the same cases on appeal in this Court, and the Louisiana Lottery case, decided by Judge Billings, and not reported, on the other side.

In Macauley against Kellogg, the case was to a great degree rested upon the rule of procedure, that a Court of Equity will not issue a mandatory injunction *pendente lite*. The Court, however, does consider, and regards with great gravity, the question of the right of Courts, or the United States, to, as it says, "compel State officers to execute the laws of the States."

We submit that there can be found nowhere any principle of jurisprudence which makes the financial department of a government or its financial officers stand in any other light, or have any other rights, than any other department or any other officers.

No one pretends that there is any power in the Courts, in a general way, to require State officers or United States officers to do their duty.

No one pretends that there is any power in the Courts to control the legislative discretion or executive discretion of a state or its officers. But the power clearly does exist to compel any officer to execute a ministerial duty imposed upon him by law, in favor of anyone who may be interested therein; and not only is there no limitation that such act shall not affect financial matters, but, in almost every case of its exercise, the acts *have* affected financial matters. The true test is the same that was applied in the English case of Murray vs. Earl Clarendon, L. R., 9 Eq. Cases, 20; if the appropriation or law is a parliamentary or legislative one its execution will be compelled by the Courts. If, however, the Legislature appropriates a certain

sum for the use of a department or officer, his acts within the limit of that general purpose will not be controlled by the Court.

To illustrate by the case at bar: If the said officers had answered to any one of us presenting bonds or coupons, that the genuineness of such bonds or coupons was not sufficiently proved, or the ownership thereof was not sufficiently proved, it would be a matter within the discretion of such State officers, and the Courts would not control it. But in a case where the law directs the State officers to collect a tax, and when collected to pay it to the holders of certain bonds if the State officers refuse either to collect the tax or to appropriate it for such purpose, the Courts will compel their action, and the conclusion of the Courts will not be controlled in any respect by the adoption by any body of men of so called constitutional amendments, or the passage of so called laws, which by reason of conflict with the paramount law of the United States are as void as if they had never been written.

We append to this brief a copy of the opinion of Mr. Justice Pardee, Circuit Judge in the Louisana Circuit, in a case involving the same question. We also beg to refer the Court to our brief on these questions in the case of The State of New Hampshire against The State of Louisiana (original No. 2), argued at the same time and submitted herewith.

Second. The judgment of the Court below should be reversed, with instructions to award a peremptory mandamus to the defendants to collect the tax levied by Act No. 3 of the laws of 1874, and to pay from the funds in their hands, collections of prior taxes levied for that purpose, the coupons of the bonds of the State of Louisiana issued under that act, which fell due upon the first day of January, 1880.

WHEELER H. PECKHAM,
Of Counsel for Plaintiffs in Error.

Appendix.

ANNETTE DESIRE CHAFFRAIX vs. BOARD OF LIQUIDATION ET AL.	In Equity, No. 9820.

On motion for preliminary injunction.

The bill in this cause is brought by the complainant, a citizen of France, against the defendants, as members of the State Board of Liquidation, to prevent the diversion of certain funds, collected by taxation under the consolidated bond Acts of 1874, to pay the coupons of the consolidated bonds falling due January 1, 1880, which funds are now in the hands on deposit of one of the defendants. It is alleged that these funds are "trust funds," and that the defendants threaten to divert them under authority of the third article of the State debt ordinance, adopted with the constitution of 1879, reading:

"That the coupon of said consolidated bonds falling due the 1st of January, 1880, be and the same is hereby remitted, and any interest taxes collected to meet said coupon are hereby transferred to defray the expenses of the State Government," and under Act No. 3 of the Legislature of 1881, approved January 4, 1882, entitled "An Act to provide for the funding of the interest fund now in the hands of the Fiscal Agent of the State and to accrue into bonds of the United States Government, and to provide for the payment of the reduced interest due or to become due on the bonds of the State," and which act transfers the fund collected to pay the January, 1880, coupons of the consolidated bonds to a reduced interest fund.

It will be noticed that this last act is in direct conflict with the third article of the debt ordinance, as the latter transfers the fund to pay the general

expenses of the State Government, while the former transfers the fund "to pay the reduced interest that is or may become due on State bonds converted or stamped under the ordinance of the constitution of 1879, in reference to the State debt."

The said article of the debt ordinance of the constitution and the said act No. 3, of 1881, are alleged by the bill to be in violation of section 10, article 1, of of the constitution of the United States, as impairing the obligations of the contract under which complainants' bonds were issued.

The bill prays for a receiver, and an injunction.

The question necessary to pass upon at this time is merely whether under the showing made in the bill an injunction may issue pending the suit. The only objection urged being that the State of Louisiana is the real party defendant, and that, therefore, the Court is without jurisdiction by reason of the eleventh amendment to the constitution.

This question has been settled in this Court in the case of McComb vs. Board of Liquidation, 2d Woods, p. 48, and affirmed by the Supreme Court, 92 U. S., p. 531, which was a case arising under the very same act, amendment and contract, as the case under consideration.

In that case the defendants sought shelter under the sovereignity of the State as a cover to execute an unconstitutional law of the State, but the courts held that an injunction would lie against them as individuals and as officials of the State, notwithstanding the law or the interest of the State, to prevent them from violating the contract of 1874, and that to such a suit the State was not a necessary party.

If the Court has jurisdiction to prevent the defendants from violating the contract between the State and the bondholders by issuing bonds at par to the detriment of the bondholders' security, what doubt can there be of the jurisdiction of the Court to prevent the defendants from diverting the entire security?

No case yet decided in this Court denies the jurisdiction to restrain the defendants, as individuals, from impairing the obligations and securities of the funding acts of 1874.

For my own part I have no doubt that the Courts of the United States, if proper cases are made, can prevent any agent of the State, as well as any individual, from diverting a dollar from the fund actually collected under the act and amendment of 1874.

The difficulty is and has been what use is there in merely tying up the funds? If the bondholders cannot have their dues, why hinder the money from going to pay the expenses of the State? As there is some force in these objections it is necessary to examine further into the purposes of the present bill.

Every case that has been brought heretofore has been on the theory that the Court should compel the levying and collection of the five and a half mill tax provided by Act of 1874, or should reach into the Treasury of the State and take the moneys of the State and apply them to the payment of the bonded debt of the State, or that the Court should by mandatory process carry into full effect the act and amendment of 1874, levy and collect the tax and pay the bondholders.

The present bill is brought only in relation to such funds as have been levied and collected from the tax payers of the State under the act and amendment of 1874, and have passed from the tax collectors to the State Treasurer, and from the State Treasurer to the Fiscal Agent of the State, where they are now held as a separate and distinct fund to the credit of the interest fund created by the Act of 1874, and is based upon the following propositions of law and fact:

The act of the Legislature of Louisiana of 1874, approved January 24th of that year, and the constitutional amendment of 1874, ratified by the people in that year, created a trust fund for all moneys

collected and paid over to the State Fiscal Agent under the said law and amendment for the purposes therein specified, and of that fund so coming into his hands the State Treasurer, State Auditor and the Board of Liquidation became the trustees—the holders of the consolidated bonds issued under the said law and amendment, became primarily the beneficiaries, the State of Louisiana occupying the position of, and having only the interest of a debtor who has created a trust for the payment of his creditors, and is not a necessary party to this suit.

These propositions seem to me to have great force and plausibility, and they can be supported by very respectable authority.

That a State by its legislation or by its public officers duly authorized, can create a trust, convey property and appoint trustees.

See Perry on Trusts, 1st Vol., sec. 30, and Commissioners vs. Walker, 6 Howard (Miss.), 143.
State ex rel. Marshal vs. Rusk, 21 Wis., 212.

That the trustees may be the officers of the State.

See Perry on Trusts, Vol. 1, sec. 47, and cases there cited.

That the said act and amendment created a trust. (See Perry on Trusts, sec. 82. Maenhaut vs. New Orleans, 2d Woods, 108, and the numerous cases there cited by Judge Woods.)

That the State Treasurer, State Auditor, and the Board of Liquidation are constituted the trustees. (See latter part of section 7 of the act of 1874 and the latter part of 1st amendment of 1874.)

When the proceeds of the 5½ mill tax under the act of 1874 reached this Board of Liquidation no further act of the State—no order, no appropriation—was necessary. No discretion was given; the money was to be paid to the bondholders, and the law made it felony to divert it.

See section 7 of act of 1874, and article 1 of amendment.

The interest of the State, if she have any, is that of a *cestui qui* trust, subordinate to the bondholders. If a *cestui qui* trust is entitled to a distinct and aliquot share of an ascertained fund he may maintain a bill against the trustees for that share without joining the *cestus qui* trust of the remaining fund.

See Perry on Trusts, Sec. 882, and authorities there cited.

The bill shows that the fund sought to be reached is not sufficient to satisfy the legitimate demands of the bondholders, and the conclusion ought to follow that the State has no resulting interest.

If all the members of the Board of Liquidation were private citizens, as two of them are, not holding any State office, what doubt could there be among lawyers as to the fiduciary relation of the board to the bondholders?

And under the authority of a number of adjudicated cases, the fact that the trustees are officials of the State creating the trust would seem to make no difference.

In Commissioners vs. Walker, 6th How. (Miss.), the Commissioners of the Sinking Fund were held to be trustees of that fund and liable to sue and be sued, although officers of the State.

In State vs. Rusk, 21st Wisconsin, the Bank Comptroller of the State was declared the Trustee of the securities in his hands, although he was an official of the State, sworn and bonded.

It is elementary that particular formality is not required in the creation of a trust. Any agreement or contract in writing, made by a person having the power of disposal over property, whereby such person agrees or directs that a particular parcel of property, or a certain fund, shall be held or dealt with in a particular manner, for the benefit of another, in a Court of Equity, raises a trust in favor of such other person against the person making such agreement, or any other person claiming under him, voluntarily or with notice.

And it is said that "equity loves a trust," and that "equity will never allow a trust to fall for want of a trustee."

Now, if the foregoing propositions in regard to the character of the funds levied and collected under the Funding Acts of 1874, and now in the hands of the defendants, are correct, there would seem to be no doubt as to the power of the Court to grant the relief sought in the bill; first, by preserving the funds until an account can be taken, and then by a receiver, as prayed in the bill, distributing the funds to their proper owners.

But there is a broader view that may be taken of the quantum of relief that the Courts may grant under the showing made by the bill.

There can be no doubt that the act and amendment of 1874 constitutes a contract between the State of Louisiana and the holders of the consolidated bonds issued under said contract.

The terms, provisions, stipulations and agreements contained in said act and amendment leave no doubt on this point. But that the man who reads may know for certain, it is expressly declared in the act, and reiterated in the amendment, that it is "a valid contract between the State and each and every holder of said bonds, which the State shall by no means and in no wise impair."

Now, if the main contracting party, the State of Louisiana, were an ordinary individual or corporation, what question could be made against enforcing this contract against all parties in a Court of equity?

But the State of Lousiana cannot be sued in her own Courts without her consent, nor in the Courts of the United States by any citizen, native or foreign; and this difficulty in the way of putting the parties to the contract on equal terms before the law was obviated by the provision in the amendment that "no court shall enjoin the payment of the principal or interest thereof, (referring to the bonds,) or the levy and collection of the tax therefor. To secure such levy, collection and payment the judicial power shall be exercised when necessary."

Now, if a constitutional amendment, ratified by a vote of the people, can have any force, it seems as clear as words can make it that as to the consolidated bonds, and the levy and collection of taxes to pay the interest thereof, and the payment of the interest, the State of Louisiana abdicated and renounced her exemption from suit and contracted to stand before the courts as an ordinary litigant. And, moreover, provided that the various State officers might be coerced by the Courts to perform the various duties devolving upon them under the said act and amendment, has the State ever repealed or abrogated the contract? If so, when?

The State has defaulted on the payment of interest. She has repudiated five-sevenths of the stipulated interest. She has remitted the coupons falling due January 1, 1880, and has undertaken to appropriate the interest taxes collected to pay the said coupons to other purposes.

She has stopped her officers from levying and collecting the tax stipulated in the contract.

She has violated her contract, but she has not in terms abrogated it, and she has not yet denied the jurisdiction of the Courts "to secure such levy collection and payment."

Concede that the State never consented that she might be sued like any other litigant, or that having so consented, she has revoked her consent—the right to compel her officers to perform their various duties under the said act and amendment has never been revoked, and the Courts of the State have entertained and still entertain suits to that end.

It is true that the present Supreme Court in the case of Hart vs. Burke, Treasurer, has decided that the Courts of the State are, under the present constitution, powerless to compel the levy of the tax to pay the interest under the funding act, or to prevent the diversion of the accumulated interest fund collected under said act, and, so far, the State may be said to have revoked; but I deny that there is a scrap of constitution or law declaring a revocation

of the declaration in the contract of 1874, that "to secure such levy, collection and payment, the judicial power shall be exercised when necessary."

There is no doubt that if the Courts of the State have such power, the United States Courts in proper cases have the same power.

But be this question of jurisdiction of the State Courts as it may, the contract of the State with the holders of the consolidated bonds cannot be impaired by any law or constitutional provision of the State without violating the Constitution of the United States, and any such impairment the Courts of the United States are bound to disregard.

Now it may well be that notwithstanding the consent and renunciation of the State, the Federal Courts cannot entertain jurisdiction where the State is a necessary party in order to grant the relief sought; and yet, wherever the State is not absolutely required as a party, the Courts can act upon the agents of the State to enforce the contract that the State has consented may be so enforced.

To compel the levy and collection of a tax, which is an exercise of sovereignty, may require the presence of the sovereign; but when the tax has been levied and collected and paid over to the Treasurer, and by him deposited and set apart, and nothing remains but a ministerial duty to be performed, what need is there of making the State a party, and why cannot relief be granted by injunction, mandatory or otherwise?

See Davis vs. Gray, 16th Wallace, 202, and cases there cited, pages 220 and 221.

McComb vs. Board of Liquidation, 2d Woods, 48, and 92 U. S., 531, and cases cited.

Hancock vs. Walsh, 3d Woods, p 351.

Vose vs. Trustees, 2 Woods, 648.

In the leading case of Osborn vs. Bank, 9th Wheaton, the State of Ohio had a direct pecuniary

interest in the funds reached, the seizure of the funds was her act, and they were carried on her books as part of the general funds in her treasury. Actually the funds were kept separate, but no more so than this interest fund now in the hands of the defendant, the Fiscal Agent.

The case of Davis vs. Gray was not, as counsel have argued, decided wholly under the law of Texas. The Court says: "Upon the grounds of the jurisdiction of both the United States and of Texas, we hold this bill well brought as regards the defendants."

And there is no adjudicated case in the Federal courts called to my attention that is directly against this view of this case.

The case of Macauley vs. Kellogg (2d Woods, 13), was a case brought on bonds of the State, where there was no conceded contract, that the judicial power might be invoked to secure the levy and collection of the necessary tax and payment of the interest, and the relief sought was to compel the officers of the State to levy and collect taxes.

The case of Elliott vs. Nicholls, Governor, not reported, is a very strong case and well reasoned, but that case was on a bill shaped directly against moneys in the State Treasury, and originally against the State itself as a party. The case is now on appeal to the Supreme Court.

Two cases seem to have carried great weight in the case of Elliott, the celebrated Banker's case (14 Howell's State Trials), and United States vs. Guthrie (17 Howard.)

The Banker's case was overruled by the House of Lords, following the opinion of Chief Justice Holt, and stands as authority only upon the argument of Lord Somers, who practically justified a villainous fraud by sustaining the King's prerogative.

The case of United States vs. Guthrie was decided by a divided Court, and the judgment was based by four of the judges on the ground that the Treasurer of the United States could not be compelled by

mandamus to pay money from the Treasury, although legally appropriated; by four others on the ground that a writ of mandamus on the Secretary of the Treasury was not a legal remedy to try relator's right to office; Judge McLean dissenting entirely. So that case practically decides nothing, and Judge McLean's reasoning is fully as strong as Judge Daniels'; and is more in accordance with the principles of Republican government. And Judge McLean cites the case of Kendall vs. United States, 18 Peters, 608, where a mandamus was allowed against the Postmaster-General, as settling the question.

And the case of the United States vs. Schurz, 102 U. S., 378, seems to settle the question again, that where an executive officer of the United States, even a Cabinet Minister, may be compelled by mandamus to perform a ministerial and positive duty.

It seems to me to go without argument that the ministerial and positive duty of the defendants to pay the relator's coupons is just as plain as it can be made.

The case of Hart vs. Burke, Treasurer, (33d La. Ann., p. 499) "simply decides that under the laws, jurisprudence and system of practice prevailing in this State and regulating the powers of Louisiana courts, the remedies invoked by the plaintiff in these cases are such as no courts of this State possess or ever possessed the power to grant in a proceeding of the character of that presented" — in other words, that the State Courts have no jurisdiction.

The Court repudiates attempting to pass upon the bondholders' rights under the funding acts of 1874, or upon the jurisdiction of the United States Courts in the premises.

It is easy to see that judges holding under the Louisiana Constitution of 1879, might feel powerless to carry out contracts which they consider are repudiated by that instrument.

The Attorney General of Louisiana in argument takes the position that the State of Louisiana has

declared that she does not owe these coupons of 1880, and that if her officers can be made to comply with the acts of 1874, the eleventh amendment to the United States Constitution is so much waste paper.

The first proposition is not true in fact, for the State of Louisiana has never declared that she does not owe these coupons, but, on the contrary, her indebtedness is admitted by the terms of the State debt ordinance, and the other proposition is *non sequitur*. Article 1, Section 10, of the constitution, "No State shall pass any law impairing the obligation of contracts," is the clause of that great instrument that is in danger of the waste basket if the constitution of Louisiana of 1879 is given the force that the representatives of the State claim for it.

It seems to me that many of the doubts arising with regard to the ability of the Court to grant relief come from following decisions rendered either with a view of maintaining the kingly prerogative, or respecting the rights of some independent sovereignty.

It is said that in England the arms of equity are short against the Crown's prerogatives, and that they are short in this country against the sovereign.

But the fact is that in this country no person or set of persons is above the law of the land, and in the Courts of the United States "the arms of equity are never short" when the proper parties can be brought before the Court so that justice may be done according to equity and good conscience. It is not the interest of the State that defeats the case under the eleventh amendment. The Court can grant relief in all cases where the State is not essentially necessary as a party.

From what has been shown herein, it seems that the Court may not be powerless to grant final relief in this case, either by holding the fund now in the hands of the defendants to be a trust fund and ordering the distribution thereof through a receiver, or by a broader view of the case, enforcing the per-

formance of the contract by mandatory injunction; and that, therefore, the preliminary injunction prayed for should be granted.

"If there be a *prima facie* or even a doubtful case shown, it is the interest of both parties that the interlocutory injunction should issue." Justice Grier, 3 Wall, Appendix 791. See Justice Bradley, 3 Woods, 676.

"On a motion for a preliminary injunction the Court is not bound to solve doubtful and difficult questions of law."

Parker vs. Sears, 1 Fish., 93.

Particularly is this the case when nearly the identical questions now pending before the Supreme Court, whose decision I have no desire to forestall, but which the defendants may render nugatory unless the preliminary injunction is granted.

I think the injunction prayed for should issue, but I decide nothing further in this case than that this court has jurisdiction under the bill as shaped to prevent by injunction *pendente lite* the defendants from diverting the fund collected and set apart under the funding act of 1874 to pay the coupons of the consolidated bonds falling due January 1st, 1880, and that such injunction ought to issue to the end that the fund may be preserved intact until the rights of the parties, and the interest of the State of Louisiana, if any she has, may be determined contradictorily.

The other questions discussed herein are open questions.

Let the injunction issue *pendente lite* and let the defendants demur, plead or answer as counsel may advise, by the third Monday in April next.